

No. 17-17463

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ANDREW ALLEN, ET AL.,

Plaintiffs-Appellants

v.

UNITED STATES, ET AL.,

Defendants-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
(HON. WILLIAM H. ALSUP, NO. 3:16-CV-04403)

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**ANSWERING BRIEF FOR THE FEDERAL DEFENDANTS-APPELLEES**

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## INTRODUCTION

Plaintiffs-Appellants Andrew Allen and other individuals (“Plaintiffs”) challenge a decision of the U.S. Department of the Interior (“Interior”) that Plaintiffs are not a “tribe” eligible to organize under the Indian Reorganization Act, 25 U.S.C. § 5123. Plaintiffs reside on the Pinoleville Rancheria and previously participated in the organization of the federally recognized Pinoleville Pomo Nation. After reviewing historical records and obtaining comment from Plaintiffs and others, Interior determined that Plaintiffs are neither “the Indians residing on one reservation,” *id.* § 5129, nor a “group of Indians . . . for whom a reservation is established,” 25 C.F.R. § 81.1(w) (2014). Instead, Plaintiffs are merely part of the group of Indians for whom the Pinoleville Rancheria was established. Plaintiffs accordingly cannot organize their own separate tribe under the Indian Reorganization Act.

As elaborated herein, Interior’s decision complied with an applicable settlement agreement, the Indian Reorganization Act, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Interior’s decision was reasonable, and the federal courts owe substantial deference to Interior’s expertise in Indian affairs. The district court’s judgment upholding Interior’s decision should be affirmed.

## STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 because Plaintiffs’ claims arose under the above-cited federal statutes and regulations.

The district court's judgment was final because it resolved all of Plaintiffs' claims in favor of all defendants. This Court has jurisdiction under 28 U.S.C. § 1291.

The district court entered judgment on November 27, 2017. ER1-14.<sup>1</sup> Plaintiffs filed a notice of appeal on December 11, 2017, or 14 days later. ER15. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(B)(i), (iii).

### **STATEMENT OF THE ISSUE**

Whether Interior reasonably determined that Plaintiffs are ineligible to organize separately as a "tribe" as defined in 25 U.S.C. § 5129, as interpreted by 25 C.F.R. § 81.1(w) (2014), where they constitute only a portion of the Indians for whom the Rancheria was established.

### **STATUTORY AND REGULATORY ADDENDUM**

Pertinent statutes and regulations are reproduced in the addendum to this brief.

### **STATEMENT OF THE CASE**

#### **A. Federal recognition and the Indian Reorganization Act**

Congress enacted the Indian Reorganization Act in 1934, ch. 576, 48 Stat. 984, to revitalize Indian tribes. SER56-62. Among other benefits, the Act provides "[a]ny

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<sup>1</sup> The Excerpts of Record are cited as "ER." The Supplemental Excerpts of Record are cited as "SER" and the Confidential Supplemental Excerpts of Record that are filed under seal are cited as "CSER." All are followed immediately by cited page numbers.

Indian tribe” with “the right to organize for its common welfare.” 25 U.S.C. § 5123.<sup>2</sup> To organize, Indian tribes may petition the Secretary of the Interior through Regional Directors of the Bureau of Indian Affairs, to hold an election that allows their members to “adopt an appropriate constitution and bylaws, and any amendments thereto.” *Id.* § 5123(a). Applicable regulations require the submission of a petition “bearing the signatures of at least 60 percent of the tribe’s adult members.” 25 C.F.R. § 81.5 (2014).<sup>3</sup>

As relevant here, the Indian Reorganization Act defines “tribe” as “any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.” 25 U.S.C. § 5129. The statute also defines “Indians” as including (among others) “all other persons of one-half or more Indian blood.” *Id.* § 5123. Pertinent regulations include in the definition of “tribe” “any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation.” 25 C.F.R. § 81.1(w)(2) (2014). The regulations clarify that “Indians” include “any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.” *Id.* § 81.1(i)(2).

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<sup>2</sup> Effective September 1, 2016, Congress reclassified and renumbered certain sections of the IRA to Chapter 45 of Title 25, beginning with section 5101 (formerly 25 U.S.C. § 461 et. seq.).

<sup>3</sup> The IRA’s implementing regulations were amended in 2015. *See* 80 Fed. Reg. 63,106 (Oct. 19, 2015). Pursuant to the terms of the settlement agreement, discussed below, the pre-2015 regulations apply to the decision under review because that version was in effect when Plaintiffs submitted their petition to Interior. *See* ER76, ER79-80, ¶ 11.

The ability of a tribe to organize under the Indian Reorganization Act is distinct from the concept of federal recognition. Federal recognition or acknowledgement of groups as Indian tribes establishes a government-to-government relationship between the United States and the tribal government, and is a prerequisite for tribes to receive protection, benefits, and services from the federal government. 25 C.F.R. § 83.2; *United States v. Washington*, 593 F.3d 790, 801 (9th Cir. 2010). Federal recognition of tribes was effected on an ad hoc basis by Congress and the Executive Branch of the federal government throughout the 20th century until Interior promulgated acknowledgment regulations in 1978. *See Miami Nation of Indians, Inc. v. Interior*, 255 F.3d 342, 345 (7th Cir. 2001); 25 C.F.R. pt. 83; 43 Fed. Reg. 39,361 (Sept. 5, 1978); 59 Fed. Reg. 9,280 (Feb. 25, 1994). These regulations allow any Indian group to petition Interior for acknowledgment. *See James v. U.S. Dep't of Health & Human Servs.*, 824 F.2d 1132, 1136 (D.C. Cir. 1987); 25 C.F.R. §§ 83.5, 83.6, 83.7. Interior publishes a list of all federally recognized tribes in the Federal Register. *See* 25 U.S.C. § 5131.

#### **B. The history of the Pinoleville Rancheria.**

The Pinoleville Pomo Nation—also known as the Pinoleville Rancheria, the Pinoleville Band of Pomo Indians, or the Pinoleville Indian Community—is a federally recognized tribe, located in Mendocino County, California. ER20. The Pinoleville Rancheria was purchased in 1911 for a group of Pomo Indians living in the area under statutes that appropriated funds for the purchase of land for homeless California Indians. ER20-21; SER86-87; SER53-55; *see also* Act of June 21, 1906,

ch. 3504, 34 Stat. 325, 333; Act of Apr. 30, 1908, ch. 153, 35 Stat. 70, 77. In that same year, the precursor to the Bureau of Indian Affairs received a list of names of the Indians living on the Rancheria. ER21; SER53-55. Plaintiffs' ancestors appear in that list and in subsequent census rolls. *See* CSER424-25 (identifying ancestors of Plaintiffs that appeared in census rolls from 1911, 1929, 1940, 1944, and 1947); CSER390-423 (census rolls).

In 1935, the Indians living on the Pinoleville Rancheria voted to accept the terms of the Indian Reorganization Act. ER21; SER63-65 (describing voting process). According to the Bureau of Indian Affairs' records, Plaintiffs' ancestors are on the 1935 list of Indians who voted to accept the Act for the Pinoleville Rancheria. ER21; *see* CSER424-27; SER72-73. In the two decades following that vote, the Pinoleville Rancheria worked continuously with the federal government to organize under the Indian Reorganization Act through the adoption of a constitution approved by the Secretary of the Interior. ER21.

In 1958, before the Pinoleville Rancheria could obtain approval of its constitution, Congress passed legislation commonly known as the Rancheria Act, pursuant to which the government-to-government relationship with the Pinoleville Rancheria was terminated in 1966. SER153-54; SER122-26. As required by the Rancheria Act, Interior established a distribution plan and published in the Federal Register a list of individuals eligible to receive distributions of property from the termination of the Pinoleville Rancheria. SER153-54; CSER292-303; *see also* SER100-

09 (Rancheria Act regulations). The distribution plan for the Pinoleville Rancheria stated that the “Indians listed herein are recognized as the only Indians of the rancheria who hold formal and informal assignments and are entitled to share in the distribution of the property.” CSER293. All Plaintiffs are either listed on the distribution plan or are descendants of individuals listed on the distribution plan. ER22; *see* CSER426-27 (detailing which Plaintiffs or which of their ancestors were listed on the plan).

Prior to the 1966 termination, the distributees of the Pinoleville Rancheria created the Association of Pinoleville Freeholders so that they could manage community property located on the Rancheria. ER22; SER110-11. Plaintiffs are either members of, or descendants of members of, this association. ER22; CSER426-27 (describing how Plaintiffs and their ancestors participated in the organization process of the Pinoleville Rancheria).

After the Rancheria was terminated, the Pinoleville Rancheria and others sued to regain their federal recognition and in 1983, the Pinoleville Rancheria was restored to federal recognition by stipulated judgment. ER22. Thereafter, the Pinoleville Rancheria again attempted to organize under the Indian Reorganization Act, but it became embroiled in internal tribal enrollment issues and elections disputes. *Id.*; CSER364-80; SER127-38; CSER304-10 (1994 membership roll). Plaintiffs participated in those attempts to organize. *See, e.g.*, CSER311-63.

In the early 2000s, Interior assisted the Pinoleville Rancheria in resolving enrollment issues. ER22; *see also, e.g.*, CSER311-88; SER127-36; SER140. In 2003, the Pinoleville Rancheria held a general membership meeting in which the members voted to adopt a list of eligible members that was compiled by Interior. ER22. This list included the distributees and their dependent members from the termination of the Rancheria, the persons on membership lists from the 1930s, and all of their descendants. ER22; CSER381-89; CSER263. Sixteen of the eighteen Plaintiffs in this lawsuit were eligible to participate and vote in the 2003 membership meeting, and fourteen of them signed into the meeting. ER22; CSER107-32 (sign-in sheets); CSER260-61 (election committee meeting minutes); CSER426-27 (identifying which Plaintiffs were included on the 2003 membership list). The adopted membership list was used to determine who could vote in a June 2003 special election to select a tribal council to lead the tribe through the organization process. ER22; SER135; SER140.

The tribal council ultimately published a notice that an election would be held in June 2005 to vote on a constitution for the “Pinoleville Indian Reservation.” The same sixteen Plaintiffs who were eligible to vote on the membership list were eligible to vote in the 2005 election and ten of them signed in at the election. ER22; CSER133-40 (sign-in sheets); CSER426-27 (identifying which Plaintiffs were included on the 2005 list of individuals eligible to vote on a constitution). The 2005 election resulted in the adoption of a constitution for the Pinoleville Pomo Nation. ER22.

**C. The original lawsuit.**

Certain individuals (including some of Plaintiffs here) who participated in the organization of the Pinoleville Rancheria subsequently sought to organize separately under the Indian Reorganization Act as a different group. They called themselves the Ukiah Valley Pomo Indian Tribe, and they asked Interior to call an election so they could adopt a different constitution. Though the Ukiah Valley Pomo Indian Tribe is not a federally recognized tribe, the individuals constituting the group asserted they were entitled to organize under the Indian Reorganization Act because they possess one-half or more Indian blood, because they reside on the Pinoleville Rancheria, and because the Rancheria was established for them. *Allen v. United States*, 871 F. Supp. 2d 982, 984-85 (N.D. Cal. 2012) (“*Allen P*”); ER21-23.

In 2010, the relevant official of the Bureau of Indian Affairs denied the group’s request on the ground that he lacked authority to call an election for a tribe that was not federally recognized. Rather than exhausting their administrative remedies, a subset of the individuals who had requested the election (including some Plaintiffs here) sought judicial review of the denial. ER74. The district court determined that it lacked jurisdiction and dismissed the suit. *Allen I*, 871 F. Supp. 2d at 993-94; ER75. Those individuals appealed to this Court, and the appeal was docketed as *Allen v. United States*, No. 12-16573 (July 12, 2012). ER75.

After extensive negotiations overseen by this Court’s Mediation Office, the parties settled the case in 2015. *See* ER74-89. The settlement agreement established an



administrative process for Interior to issue a decision as to whether the plaintiffs in *Allen I* were eligible to organize under the Indian Reorganization Act. ER79-84, ¶¶ 11, 14, 15-18; *see also* ER19. That question turned on whether they could demonstrate that they meet “the criteria” in 25 U.S.C. § 5129 and 25 C.F.R. § 81.1(w)(2) (2014). ER80, ¶ 12. The settlement agreement did not individually identify, summarize, or explain any of the criteria at issue; it simply quoted the relevant statutory and regulatory definitions of “tribe” and “Indian” outlined above. ER75-76 (quoting statute and regulations); ER85, ¶ 20 (referring to the “statutory and regulatory requirements for being a ‘tribe’ eligible to organize”). Thus, to be eligible, those individuals were required to show that they constituted a “tribe” as those terms are defined in 25 U.S.C. § 5129 and 25 C.F.R. § 81.1(w)(2) (2014). ER79, ¶¶ 11-12; ER80-83, ¶ 14 (listing the types of information that Plaintiffs could submit to establish their eligibility). The settlement agreement established an iterative process whereby petitioning individuals had several opportunities to provide information to Interior. ER80-84, ¶¶ 14, 18. The settlement agreement also required Interior to notify the public that it was considering the request and to solicit public comment and input from the Pinoleville Pomo Nation. ER83-84, ¶ 16.

If Interior determined that the group was a tribe eligible to organize under the Indian Reorganization Act, the group would then submit a petition for an election to be conducted by Interior, at which the settling plaintiffs would vote on whether to adopt a constitution. ER79, ¶ 11. The Assistant Secretary-Indian Affairs delegated

responsibility for issuing a final decision on tribal status to the Regional Director of the Pacific Region of the Bureau of Indian Affairs. ER85, ¶ 22; SER1-2 (delegation). After the parties entered into the settlement agreement, the appeal was dismissed. *See* Order, *Donald Allen, et al. v. United States*, No. 12-16573 (9th Cir. Jan. 29, 2015).

**D. Interior’s decision pursuant to the settlement agreement.**

Interior undertook the process outlined in the settlement agreement to determine whether Plaintiffs were a “tribe”—that is, whether they were “the Indians residing on one reservation,” 25 U.S.C. § 5129, or “any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation,” 25 C.F.R. § 81.1(w)(2) (2014). In particular, Interior met with Plaintiffs and reviewed their submissions. SER3-16. Interior also published a notice in the local newspaper and in the Federal Register soliciting input on their request to organize. SER19; SER21. Interior mailed letters to all residents of the Pinoleville Rancheria and solicited input from the Pinoleville Pomo Nation. CSER63-65. Interior also provided Plaintiffs with an opportunity to respond to the information that it received from the Pinoleville Pomo Nation and others. *See, e.g.*, CSER1-62; CSER66-100.

After considering Plaintiffs’ submissions, public comments, and historical records, Interior issued a decision on April 1, 2016, denying Plaintiffs’ request to organize. Interior determined that, although the individuals met the definition of “Indian” and resided on the Pinoleville Rancheria, ER20, ER84 ¶ 17, they were not

eligible to organize as a tribe where they “represent only a portion of those Indians for whom the Pinoleville Rancheria was originally purchased.” ER22. As documented above (pp. 4-7), Plaintiffs are descendants of individuals living on the reservation in the early 1900s; were listed on or are descendants of individuals who were listed on the plan for the distribution of the assets of the Rancheria when it was terminated; they either participated or are descendants of individuals who participated in the Rancheria’s “lengthy endeavor to organize under the provisions of the IRA”; and a majority of Plaintiffs participated in the tribe’s election as recently as 2003 and 2005. ER23.

The Indian Reorganization Act has no mechanism for “permitting splinter groups or factions of a tribe to set up independent tribal governments.” ER23. The Indian Reorganization Act permits the organization of “tribes” only—and not parts of already-organized tribes. ER23. The Indians for whom the Pinoleville Rancheria was established had already organized under the Indian Reorganization Act (as the Pinoleville Pomo Nation). Plaintiffs were a subset of that group and participated in its organization. They therefore were not eligible to organize as a separate tribe. ER22-23.

Interior’s decision was final agency action and subject to judicial review pursuant to the terms of the settlement agreement. ER23; ER85, ¶ 22.

**E. Proceedings in district court.**

Plaintiffs challenged the denial of their request to organize in the district court. On the parties' cross-motions for summary judgment, the court rejected Plaintiffs' challenge. For the reasons set forth above, the court ruled that Interior reasonably determined that Plaintiffs are not eligible to organize as a "tribe." ER7-14. The court entered judgment for Interior, ER1, from which Plaintiffs timely appealed, ER15.

**SUMMARY OF ARGUMENT**

The Indian Reorganization Act permits the organization of "tribes," which are defined by statute to include "the Indians residing on one reservation," 25 U.S.C. § 5129, and by regulation to include "any group of Indians . . . for whom a reservation is established," 25 C.F.R. § 81.1(w)(2) (2014). Before making its decision whether Plaintiffs qualify as a "tribe" under these provisions, Interior conducted a thorough review of the historical records, provided Plaintiffs multiple opportunities to submit documents and analyses, and gave public notice and an opportunity to comment.

The administrative record generated from this process shows that Plaintiffs are a subset of the group of Indians for whom the reservation was established and had already participated in the organization of that group. They descend from individuals appearing in census rolls from the early 1900s and are either listed as distributees or are descendants of distributees who received assets from the termination of the Pinoleville Rancheria. After the Pinoleville Rancheria was restored to federal recognition, Plaintiffs worked with the Pinoleville Pomo Nation to organize and

participated in the 2005 election to adopt a constitution. Because they are a part of the group of Indians that had already organized on the reservation, Interior determined that Plaintiffs are not eligible to split off from that now-organized tribe and form their own new tribe. Interior's decision is reasonable, based on substantial evidence, and consistent with the statutory and regulatory language. This Court should defer to Interior's decision.

Plaintiffs' scattershot arguments to the contrary are unavailing. Interior fully complied with the settlement agreement's instruction to determine whether Plaintiffs satisfy the statutory and regulatory definition of a "tribe." The Indian canon of construction does not warrant a different result here because, as reflected in comments that the Pinoleville Pomo Nation submitted to Interior, not all tribal interests are aligned. Plaintiffs' argument that Interior created a "one tribe per reservation" rule fails because it mischaracterizes Interior's decision. Interior neither articulated nor applied such a criterion. Finally, Interior was not required to comply with notice-and-comment requirements of the Administrative Procedure Act because it did not engage in rulemaking when it issued its decision. Instead, as required by the settlement agreement, it conducted an informal adjudication in which Plaintiffs, the Pinoleville Pomo Nation, and the public extensively participated. Interior acted in good faith when it entered into the settlement agreement and adjudicated Plaintiffs' request in good faith.

This Court should affirm the district court's judgment.

## ARGUMENT

**I. This Court reviews Interior’s decision under the deferential standard of review set forth in the Administrative Procedure Act; there is no heightened standard of review in Indian cases.**

Interior’s decision is reviewed under the Administrative Procedure Act’s “highly deferential” standard of review. *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014). Under that statute, agency action may be set aside only if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *see also Oregon Natural Resources Council Fund v. Goodman*, 505 F.3d 884, 889 (9th Cir. 2007). This Court must ask whether the agency “has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983). Where an agency “articulate[s] a satisfactory explanation for its action including a rational connection between the facts found and the choice made,” a court should affirm the agency’s decision. *Id.* at 43 (internal quotation marks omitted). The Court may not substitute its judgment for that of the agency. *Id.* Review of the agency’s action is “highly deferential, presuming the agency action to be valid.” *Buckingham v. Sec’y of Agric.*, 603 F.3d 1073, 1080 (9th Cir. 2010). This is true even if the record might support alternative findings. *Arkansas v. Oklahoma*, 503 U.S. 91, 112-13 (1992).

The “arbitrary and capricious” standard applies to both review of the factual basis of an agency’s decision, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971), and review of the agency’s reasoning as distinguished from its fact finding, *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 285-86 (1974). Courts review an agency’s factual findings to determine if they are supported by substantial evidence. *See Dickinson v. Zurko*, 527 U.S. 150, 164 (1999). Substantial evidence is such relevant evidence as a “reasonable mind might accept as adequate to support a conclusion.” *San Luis*, 747 F.3d at 601 (citation omitted). Appellate court review of agency fact-finding under the substantial evidence standard is “even more deferential” than review of district court fact-finding under the clearly erroneous standard. *Concrete Pipe & Products v. Construction Laborers Pension Trust*, 508 U.S. 602, 623 (1993).

Review is at its most deferential where an agency has acted within its area of expertise. *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 376, 378 (1989). Interior administers the Indian Reorganization Act and courts have long recognized Interior’s expertise in Indian affairs. *See Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 60 (2d Cir. 1994); *cf. United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 551 (10th Cir. 2001) (Determinations about tribal matters “should be made in the first instance by [Interior] since Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations.” (citing 25 U.S.C. §§ 2, 9)).

Though Plaintiffs nod to the Administrative Procedure Act (at 26, 29-30), they contend (at 15-17) that this Court should review Interior’s decision according to the “highest fiduciary standards” that supposedly exist independent of any statute and that supposedly provide an independent basis upon which to order declaratory relief. Plaintiffs misstate the law. To the extent there are any trust obligations of the United States to Indian tribes, those obligations are “established and governed by statute rather than the common law.” *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011). The Indian Reorganization Act imposes no fiduciary duties on the federal government that are akin to the types of “elaborate provisions” that “give the Federal government full responsibility to manage Indian resources for the benefit of the Indians’” and that have been found to provide the basis for a breach of trust claim for money damages under the Indian Tucker Act, 28 U.S.C. § 1505. *See United States v. Navajo Nation*, 537 U.S. 488, 507 (2003) (discussing limited circumstances in which a plaintiff may bring a breach of trust claim); *Menominee Indian Tribe v. United States*, 136 S. Ct. 750, 757 (2016) (“[A]ny specific obligations the Government may have under [the general trust relationship] are ‘governed by statute rather than common law.’” (citation omitted)).

The Administrative Procedure Act provides the sole basis for Plaintiffs’ claim that Interior arbitrarily determined that Plaintiffs are not a tribe under the Indian Reorganization Act, as well as the standard under which this Court should review Interior’s decision. Indeed, Plaintiffs expressly agreed in the settlement that “if they



are dissatisfied with [Interior's] decision, they will only seek judicial review of that decision in an action challenging that decision under the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, 706(2)." ER85, ¶ 22. Plaintiffs fail to point to any authority that supports their argument that a common law fiduciary duty would affect this Court's review of Interior's decision under the Administrative Procedure Act.

**II. Interior reasonably determined that Plaintiffs are not eligible to organize as a separate tribe because they are a subset of the group of Indians for whom the Pinoleville Rancheria was established and participated in the organization of that group under the Indian Reorganization Act.**

Interior determined that Plaintiffs are a subset of the group of Indians for whom the Pinoleville Rancheria had been set aside and that Plaintiffs had already organized with that group; they therefore do not independently meet the definition of "tribe" set out in 25 U.S.C. § 5129 and 25 C.F.R. § 81.1(w)(2) (2014). This decision is rooted in the statutory definition as interpreted by the regulations and applied to the facts surrounding the "Pinoleville Rancheria's lengthy endeavor to organize." ER23. Interior's decision is reasonable and entitled to deference.

The Indian Reorganization Act defines "tribe" to include "the Indians residing on one reservation," 25 U.S.C. § 5129, and implementing regulations further explain that "tribe" includes "any group of Indians . . . for whom a reservation is established," 25 C.F.R. § 81.1(w) (2014). Citing to a 1995 decision, Interior explained that the agency does not interpret the Indian Reorganization Act "as permitting splinter groups or factions of a tribe to set up independent tribal governments." ER23. In that

1995 decision, Interior determined that a group of Indians (the Shaahook group) that was a subset of a federally recognized tribe (the Capitan Grande Band of Diegueno Mission Indians) was not entitled to organize separately. ER24-28. There, portions of a reservation that had been acquired for the Capitan Grande Band of Mission Indians in 1875 were sold to the City of San Diego, resulting in the separation of the Band into two villages and the Shaahook group. The group did not live in either of the villages but the individuals constituting the group were listed as members of the Band. ER24-25. The Shaahook group sought to organize as its own tribe, separate from the Band. ER27. Interior explained that, even assuming that the individuals had an “interest” in the reservation, that interest did not make them a “tribe.” ER26. There were “no references in [Interior’s] files to an off-reservation group” of Indians “being a ‘tribe’ or even an historically based community.” ER28. Instead, those Indians were “viewed as part of the two villages.” ER28. The Indian Reorganization Act “is not a mechanism for creating or breaking apart existing tribes or organizing splinter groups.” ER24. Thus, only the Capitan Grande Band—and not parts of it—were permitted to organize. ER28.

Within this statutory and regulatory framework, Interior addressed whether Plaintiffs here are the group of Indians for whom the Pinoleville Rancheria was established. Reviewing historical records, Interior found that the Pinoleville Rancheria was established for Pomo Indians living in the area at the time. ER20-21. The Indians living on the Pinoleville Rancheria were named on a list in 1911, voted to accept the

terms of the Indian Reorganization Act in an election held in 1935, and were listed as a tribe in the Rancheria Act of 1958. ER21; *see also supra* pp. 4-6. Plaintiffs are descendants of Indians living on the Pinoleville Rancheria who voted in 1935 to accept the provisions of the Indian Reorganization Act. ER21; *see also supra* pp. 5. Plaintiffs were listed as distributees or are descendants of distributees of the assets of the Pinoleville Rancheria when it was terminated, and a majority are also either shareholders or descendants of shareholders of the association that managed communal property until the Rancheria was restored to federal recognition. ER23; *see also supra* pp. 5-6. Plaintiffs also participated in the organization of the Pinoleville Rancheria after it was restored to federal recognition in the 1980s. ER22-23; *see also supra* pp. 6-7. They were among those listed on voter sign-in sheets for the 2003 special election and the 2005 constitutional election. ER22-23; *see also supra* pp. 7.

In light of the foregoing, Interior reasonably determined that the relevant “tribe” that was eligible to organize under the Indian Reorganization Act “is limited to the group of Indians, and their descendants, for whom the Pinoleville Rancheria was originally purchased.” ER23. That group of Indians—particularly including Plaintiffs—ultimately organized as the Pinoleville Pomo Nation. Because Plaintiffs “represent only a portion of the descendants of those Indians for whom the Pinoleville Rancheria was originally purchased,” and because Plaintiffs in fact had already participated in the organization of that tribe, they were not eligible to organize separately from the Pinoleville Pomo Nation. ER22-23. This decision was supported

by historical records and submissions from Plaintiffs and the Pinoleville Pomo Nation. *See supra* pp. 4-7, 10-11.

In sum, Interior carefully considered whether Plaintiffs constituted the group for whom the reservation was established, as well as the underlying historical records, and it articulated a “rational connection” between the facts it found and its conclusion that Plaintiffs are not eligible to organize as a tribe. *State Farm*, 463 U.S. at 42-43. This decision is entitled to deference and this Court should therefore affirm it.

### **III. Plaintiffs’ contrary arguments are unavailing.**

Plaintiffs contend that Interior’s decision was arbitrary for a number of reasons, each of which must be rejected for the reasons explained below.

#### **A. Being among the individuals for whom the Rancheria was established does not entitle Plaintiffs to organize separately where Plaintiff have already participated in the organization of the Rancheria.**

Plaintiffs contend (at 20-22) that to qualify as a tribe under the Indian Reorganization Act, they need only show that (1) they are half-blood Indians residing on the Pinoleville Rancheria and (2) that they are among the individuals for whom the Rancheria was established. No party disputes either of these two facts. But Interior determined that those two facts by themselves do not entitle the group to organize as a separate tribe where the record shows that the Pinoleville Rancheria was established for a group—of which Plaintiffs are a subset—that has already organized. *See* ER26

(that a group of Indians has an interest in a reservation is not sufficient to make them a tribe).

The language of the statute and regulations support Interior's decision. The definition of "tribe" on which Plaintiffs rely defines a tribe as "*the* Indians residing on one reservation." 25 U.S.C. § 5129 (emphasis added). The use of the definite article before the plural noun "Indians" indicates that Congress intended for a "tribe" to include the entirety of the group of Indians for whom a reservation is established. *See Dutcher v. Matheson*, 840 F.3d 1183, 1194 (10th Cir. 2016) (interpreting "the" before a plural noun to mean "all"). Similarly, the use of the phrase "any group" in 25 C.F.R. § 81.1(w) (2014) ("any group of Indians . . . for whom a reservation is established") is reasonably understood to refer to the entirety of the group of Indians for whom a reservation was established. Notably, although the regulations also provide that a "tribe[] may consist of any consolidation of one or more tribes or parts of tribes," 25 C.F.R. § 81.1(w) (2014), they do not provide that a "*part* of a single tribe" may be a separate tribe. Interior's decision is consistent with the text of the statute and the regulations, as well as longstanding agency practice and accordingly deserves deference. *See Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994).

Plaintiffs next contend (at 28-29) that Interior improperly used criteria in its acknowledgement regulations, 25 C.F.R. § 83.4(b), to find that splinter groups may not organize under the Indian Reorganization Act. To be sure, § 83.4(b) provides that, except in limited circumstances, Interior will not acknowledge a "splinter group,

political faction, community, or entity of any character that separates from the main body of a currently federal recognized Indian tribe.” But a review of Interior’s decision shows that it did not rely on that provision to reach its decision. Interior did not discuss or apply the acknowledgment regulations or any of the requirements imposed by those regulations, 25 C.F.R. § 83.11. As exhaustively explained above, Interior’s decision rests exclusively on the Indian Reorganization Act, 25 U.S.C. § 5129, as interpreted by its implementing regulations, 25 C.F.R. § 81.1(w)(2) (2014), and its application of that language to the facts.

**B. Substantial evidence supports Interior’s conclusion.**

Plaintiffs contend that Interior erroneously concluded as a factual matter that they are a subset of the Indians for whom the reservation was set aside. Br. at 25 n.4, 26-27, 33 (citing ER35, ER51-53). In this regard, Plaintiffs contend (at 27) that the reservation was purchased for homeless California Indians in general and not an identifiable tribe. This contention does not do the work Plaintiffs suggest. If it were (hypothetically) true that the reservation was not established for anyone in particular, it would be equally true that it was not established *for Plaintiffs*. This counterfactual situation would independently disqualify Plaintiffs from meeting the statutory and regulatory criteria, which require that they show they are the group “for whom a reservation is established.” 25 C.F.R. § 81.1(w) (2014).

Moreover, the administrative record does not support Plaintiffs’ assertion. In fact, substantial evidence supports Interior’s conclusion. As explained above (at pp. 4-

7), records show that Plaintiffs descend from individuals who were living on the reservation in the early 1900s, received distributions of property from the termination of the Rancheria, and participated in the organization of the Rancheria. *See, e.g.*, SER26-41; SER53-55; SER66-76; SER127-36; CSER12-23; CSER107-40; CSER260-61; CSER292-303; CSER426-27. As the district court acknowledged, documents also show that some Plaintiffs recently received some benefits from the Pinoleville Pomo Nation. ER9; *see, e.g.*, CSER174; CSER210-18; CSER225-26; CSER234-57. These documents provide ample support for Interior's decision. *San Luis*, 747 F.3d at 601.

Plaintiffs also assert (at 22) that they are entitled to organize because they constitute more than 60 percent of the adult half-blood Indians residing on the reservation. This argument mischaracterizes the 60 percent requirement, which stems from 25 C.F.R. § 81.5(b) (2014) and is not at issue here. That regulation provides that Interior shall authorize an election upon the receipt of a petition bearing the signatures of at least 60% of the tribe's adult members. *Id.* Because Interior determined Plaintiffs are not a tribe eligible to organize, this requirement is irrelevant.<sup>4</sup>

### **C. Interior did not impose a one-tribe-per-reservation rule.**

Plaintiffs next argue (at 29-30) that Interior improperly interpreted the Indian Reorganization Act to prohibit the organization of more than one group of Indians

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<sup>4</sup> Plaintiffs cite (at 25 n.5) *Rosales v. Sacramento Area Dir., Bureau of Indian Affairs*, 34 IBIA 50 (July 29, 1999), to argue that it is not unusual for a half-blood tribe to be composed of as few as 20 individuals. That half-blood tribes may have few members has no bearing here.

residing on a reservation. This argument misunderstands Interior’s decision. Interior did not find, and at no point stated, that Plaintiffs could not organize because there was another federally recognized tribe residing on the Pinoleville Rancheria. Nor did Interior articulate any general rule limiting reservations to one federally recognized tribe. As explained above, Interior’s determination was based on the facts before it. Nothing in that determination would preclude more than one group to organize on a single reservation in different factual circumstances—so long as the individuals for whom that reservation was established and who organized as a tribe did not then subsequently seek to organize yet another tribe on the same reservation.<sup>5</sup>

Plaintiffs relatedly argue (at 24-25) that Interior wrongly interpreted the Indian Reorganization Act to require all or nearly all of the Indians residing on a reservation to submit a petition for an election. Interior’s decision did not turn on this issue. To be sure, Interior stated that to organize under the Act, a tribe “must comprise all or close to all the Indians residing on one reservation.” ER20. But as the district court noted, ER9, Interior expressly declined to “address[] the question of whether the Group is all or close to all of the Indians residing on the Pinoleville Rancheria,” because its “decision is based on the fact that [Plaintiffs] are only a subset of the

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<sup>5</sup> As Plaintiffs point out (at 29 n.8), there are two federally recognized tribes at the Wind River Reservation in Wyoming. *See Shoshone Tribe of Indians v. United States*, 299 U.S. 476 (1937). Unlike the Pinoleville Rancheria, which was established for a single group, the Wind River Reservation was established for two distinct tribes. The circumstances there have no bearing on Plaintiffs.



Indians for whom the Pinoleville Rancheria was set aside.” ER23. Whether Interior correctly described the provisions of the statute and regulations as requiring “all or close to all” of the Indians residing on the reservation to submit a petition is immaterial to the antecedent question whether Plaintiffs constitute a tribe.

**D. The Indian canon of construction does not apply.**

Plaintiffs assert (at 17-19, 26) that the Indian canon of construction, outlined in *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985), requires this Court to reach a decision in their favor. Plaintiffs are mistaken. This Court has held that the canon does not apply where not all tribal interests are aligned. *Redding Rancheria v. Jewell*, 776 F.3d 706, 713 (9th Cir. 2015). An interpretation of 25 U.S.C. § 5129 and 25 C.F.R. § 81.1(w) (2014) that would benefit Plaintiffs would not necessarily benefit other tribes or groups, particularly including the Pinoleville Pomo Nation. *See* CSER12-23; SER26-41; SER20; CSER25; CSER32. As the district court noted in *Allen I*, to interpret the Indian Reorganization Act to permit the organization of parts of tribes that had already organized “would lead to an absurd result whereby any two Indians living on a reservation could create their own tribe and organize under the IRA.” 871 F. Supp. 2d at 992.

The Pinoleville Pomo Nation and others living on the Rancheria made plain to Interior that this situation would be adverse to their interests. This Court has declined to apply the canon when tribal interests are adverse because the “government owes the same trust duty to all tribes.” *See Redding Rancheria*, 776 F.3d at 713 (quoting

*Confederated Tribes of Chehalis Indian Reservation v. Washington*, 96 F.3d 334, 340 (9th Cir. 1996)). That this is not the kind of a situation in which the canon should apply is reflected in the terms of the settlement agreement, in which the parties agreed that the “Indian canon of construction is inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.” ER78 ¶ 5. The canon does not apply here.

**E. Interior engaged in an informal adjudication to reach its decision and therefore did not need to follow the APA’s notice-and-comment procedures.**

Citing *Morton v. Ruiz*, 415 U.S. 199, 235 (1974), Plaintiffs assert (at 30-31) that Interior announced a new legislative rule by interpreting the Indian Reorganization Act to preclude the organization of splinter groups and that Interior should have complied with the APA’s rulemaking procedures, 5 U.S.C. § 553, before it issued a final decision. This argument fails. No statute or regulation requires Interior to follow those procedures when it informally adjudicates a request to organize under the Indian Reorganization Act. Instead, the settlement agreement required Interior to provide notice to the public concerning Plaintiffs’ request and an opportunity for the public to comment. Interior complied with the settlement, providing Plaintiffs with multiple opportunities to submit information and analysis to Interior and providing the public with an opportunity to comment. In reaching its final decision, Interior did not announce any new rule that would require publication in the Federal Register.

Instead it applied the regulatory and statutory language to the facts at hand. Interior complied with the Administrative Procedure Act.

A rule is an agency’s “statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4). For so-called “substantive” or “legislative” rules, an agency must publish a general notice of a proposed rulemaking and give interested persons an opportunity to comment. 5 U.S.C. § 553(b)-(c); *Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1203-04 & n.1 (2015). An agency must also publish in the Federal Register any “substantive rules of general applicability adopted as authorized by law” as well as “statements of general policy or interpretations of general applicability formulated and adopted by the agency” before it may apply such a rule to a person in a manner that “adversely affects” that person. 5 U.S.C. § 552(a)(1), (1)(D). An adjudication, by contrast, is an agency’s process of formulating a “final disposition” outside the rulemaking context. *Id.* § 551(5)-(7). The APA’s rulemaking requirements do not apply to informal adjudications. *International Internship Program v. Napolitano*, 718 F.3d 986, 988 (D.C. Cir. 2013) (citing *Central Texas Telephone Cooperative, Inc. v. FCC*, 402 F.3d 205, 211 (D.C. Cir. 2005)).

Although “the line dividing them may not always be a bright one,” rulemaking generally fashions policy-type standards, while adjudication applies those standards to specific circumstances. *United States v. Florida East Coast Railroad Co.*, 410 U.S. 224, 245 (1973). Rulemaking typically does not involve “evidentiary facts” but rather concerns

“the policymaking conclusions to be drawn from the facts.” *Telocator Network of America v. FCC*, 691 F.2d 525, 551 n.196 (D.C. Cir. 1982) (internal quotation marks omitted). By contrast, adjudication is “highly fact-specific.” *Conference Group, LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013). That adjudications are fact-specific, however, does not mean that an agency may not interpret a statute or regulation in the course of an adjudication. *Id.* Indeed, courts have long-recognized that “[o]rders handed down in adjudications may establish broad legal principles.” *Central Texas*, 402 F.3d at 210. “[T]he nature of adjudication is that similarly situated non-parties may be affected by the policy or precedent applied, or even merely announced in dicta.” *Goodman v. FCC*, 182 F.3d 987, 994 (D.C. Cir. 1999).

No statute or regulation requires Interior to follow notice-and-comment rulemaking procedures in rendering a decision on a petition to call an election under the Indian Reorganization Act. Interior accordingly had discretion to decide how to proceed. *See NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974) (“[T]he choice between rulemaking and adjudication lies in the first instance within the [agency’s] discretion.”). Through a mediated settlement agreement, Interior agreed to address Plaintiffs’ request through an informal adjudication that provided Plaintiffs multiple opportunities to submit information, formal notice to the public that it was considering Plaintiffs’ request to organize, and a 60-day opportunity for public comment on the matter. *See* ER83-84, ¶ 16. Interior complied with the settlement, providing notice to the public, SER19, SER21, and a 60-day period for the public to

comment. Interior also sent a letter to all residents of the Rancheria to solicit their input. CSER63-65. Interior met and corresponded with Plaintiffs and the Pinoleville Pomo Nation. *See, e.g.*, SER42-52; CSER101-40; CSER141-48. Interior also provided Plaintiffs with copies of the comments it received and an opportunity to respond to those comments. *See, e.g.*, CSER1-62; CSER66-100 (communications).

After complying with the process outlined in the settlement agreement, Interior informally adjudicated Plaintiffs' request, determining their "legal status" by applying a "preexisting" regulatory standard. *FTC v. Brigadier Indus. Corp.*, 613 F.2d 1110, 1117 (D.C. Cir. 1979). The decision was highly fact-specific and relied primarily on the statutory definition of "tribe" as interpreted by the regulations and a 1995 decision. As described herein, Interior weighed the facts at its disposal and applied its longstanding interpretation to those facts. Interior's decision has "none of the hallmarks of legislative rulemaking that [courts have] identified, such as amending a prior legislative rule or explicitly invoking the [agency's] general legislative authority." *Conference Group*, 720 F.3d at 965. Interior accordingly was not required to follow the APA's rulemaking procedures before it issued its decision.<sup>6</sup>

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<sup>6</sup> Even if this Court believes that Interior announced an interpretive rule, Interior provided Plaintiffs with actual notice by supplying Plaintiffs with argument from the Pinoleville Pomo Nation that Plaintiffs were not eligible to organize as a splinter group. *See* CSER1; CSER12-23; SER26-41. This was sufficient to satisfy the notice requirements of 5 U.S.C. § 552(a)(1).

The Supreme Court’s decision in *Ruiz* does not dictate a different result. *Ruiz* held that where Interior developed new benefit-eligibility criteria that did not clearly derive from the language of the relevant statute and where Interior’s internal procedures required publication of benefit-eligibility criteria in the Federal Register, Interior was bound to publish such criteria before it could deny financial benefits to otherwise eligible beneficiaries. 415 U.S. at 234-36. The Court subsequently clarified that the dispositive factor in *Ruiz* was that Interior *violated its own procedures* in failing to publish its requirements. *Lincoln v. Vigil*, 508 U.S. 182, 199 (1993). *Ruiz* therefore should not be understood “to require state or federal agencies to promulgate detailed regulations for every conceivable circumstance that may arise in making benefits determinations.” *Hobbs ex rel. Hobbs v. Zenderman*, 579 F.3d 1171, 1184 (10th Cir. 2009) (citing cases).

Here, unlike in *Ruiz*, nothing in the settlement or otherwise required Interior to publish or make its draft decision available for public comment. Indeed, the parties expressly agreed that, rather than providing an opportunity for further administrative review, the decision would be final and immediately reviewable in federal court. *See* ER85, ¶ 22. Interior complied with the procedures required by the settlement agreement, and Plaintiffs fully participated in Interior’s decision-making process. Nothing more was required.

**F. Interior acted in good faith in entering into and carrying out the settlement agreement.**

Plaintiffs assert (at 31-32) that if Interior had already interpreted the Indian Reorganization Act to preclude the organization of splinter groups at the time it entered into the settlement agreement, then Interior “knew it was impossible for the Indians to qualify for an IRA Election” and thus perpetrated a fraud on Plaintiffs. That is not so.

The settlement agreement did not commit Interior to any predetermined outcome. *See* ER79-85, ¶¶ 4, 5, 11, 20, 22 (settlement provisions using conditional language, such as “if” Interior determines the group is eligible, to describe the process). At the time the parties entered into the agreement, neither Plaintiffs nor Interior had developed the factual record surrounding Plaintiffs’ request to organize because their initial request was denied before Interior reached the merits. *See Allen I*, 871 F. Supp. 2d at 986. Thus, the nature of Plaintiffs’ relationship with the Pinoleville Rancheria was not clear. As was plainly contemplated in the agreement, Interior needed to develop the factual record before being able to determine whether Plaintiffs were eligible to organize. Only after Interior considered the merits of Plaintiffs’ request was it able to determine, as a factual matter, that Plaintiffs had already participated in the organization of the Pinoleville Pomo Nation and are therefore a subset of the group for whom the reservation was established. Interior carried out the

process set out in the settlement agreement in good faith. That the final determination is adverse to Plaintiffs does not prove Interior perpetrated a fraud upon them.

Setting that aside, it is not clear what Plaintiffs stand to gain by asserting (at 31-32 n.9) that they were fraudulently induced into entering into the settlement. A ruling that Interior breached the settlement agreement (or a decision from this Court invalidating the settlement agreement) would at most result in reinstatement of Plaintiffs' first appeal in the now-settled action. *See* ER87 ¶ 26; *see Gillespie v. Dep't of Navy*, 168 F. App'x 421, 423 (Fed. Cir. 2006) (reinstating appeal when United States breached a settlement agreement that specified reinstatement as the remedy for a breach). In the settled action, Plaintiffs had been denied a decision on the merits and denied judicial review when the district court dismissed the action for lack of jurisdiction. The settlement agreement provided Plaintiffs with a mechanism for obtaining a decision on the merits of their request. Although Plaintiffs are now dissatisfied with Interior's decision, they have been afforded a meaningful opportunity for Interior to address the merits, and they have been afforded judicial review.



## CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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90-11-3-09925

### **STATEMENT OF RELATED CASES**

This action is related to *Donald Allen v. United States*, N.D. Cal. No. 3:11-cv-05069-WHA, filed by some of the plaintiffs in this appeal and dismissed by the district court for lack of jurisdiction. The plaintiffs there appealed the judgment to this Court, *Donald Allen v. United States*, 9th Cir. No. 12-16573, and that appeal was dismissed after the parties settled with the assistance of this Court's Mediation Office.

Counsel for Federal Defendants-Appellees is not aware of any other related case within the meaning of Circuit Rule 28-2.6.

**Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number** 17-17463

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

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The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
- ☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is  words or  pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).
- ☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.  
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Signature of Attorney or  
Unrepresented Litigant

s/Thekla Hansen-Young

Date

08/06/2018

("s/" plus typed name is acceptable for electronically-filed documents)

## STATUTORY AND REGULATORY ADDENDUM

Table of Contents	
Document	Addendum Page Number
Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325, 333	ADD1
Act of April 30, 1908, Pub. L. No. 60-104, 35 Stat. 70, 77	ADD11
25 C.F.R. pt. 81 (2014)	ADD20

River at a point between Columbus, Georgia, and Franklin, Georgia, in the State of Georgia, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

*Ante*, p. 84.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Amendment.

Approved, June 20, 1906.

CHAP. 3449.—An Act To authorize the Georgia, Florida and Alabama Railway Company to construct three railroad bridges across the Chattahoochee River, one at or near the city of Eufaula, Alabama, and two between said city of Eufaula and the city of Columbus, Georgia.

June 20, 1906.  
[H. R. 19816.]  
[Public, No. 257.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Georgia, Florida and Alabama Railway Company, a corporation organized under the laws of the States of Florida and Georgia, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate three railroad bridges and approaches thereto across the Chattahoochee River, one at or near the city of Eufaula, Alabama, and two between said city of Eufaula and the city of Columbus, Georgia, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

Chattahoochee River.  
Georgia, Florida and Alabama Railway Company may build three bridges across, in Alabama and Georgia.

*Ante*, p. 84.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Amendment.

Approved, June 20, 1906.

CHAP. 3504.—An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

June 21, 1906.  
[H. R. 15331.]  
[Public, No. 258.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries for which are specially provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and seven, namely:

Indian Department appropriations.

I. GENERAL PROVISIONS.

General provisions.

PRESIDENT.

Under the President.

To enable the President to cause, under the provisions of the Act of February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians," such Indian reservations as in his judgment are advantageous for agricultural and grazing purposes to be surveyed or resurveyed, for the purposes of said Act, and to complete the allotment of the same, including the necessary clerical work incident thereto in the field and in the Office of Indian Affairs, and delivery of trust patents, so far as allotments shall have been selected under said Act, twenty-five thousand dollars.

Allotments in severalty.  
Vol. 24, p. 388.

Rations to mission schools.	Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents.
Continuing alienation restrictions.	That prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may in his discretion continue such restrictions on alienation for such period as he may deem best: <i>Provided, however,</i> That this shall not apply to lands in the Indian Territory.
<i>Proviso.</i> Indian Territory excepted.	
Under the Secretary	SECRETARY.
Purchase of supplies to be advertised.	That no purchase of supplies for which appropriations are herein made, exceeding in the aggregate five hundred dollars in value at any one time, shall be made without first giving at least three weeks' public notice by advertisement, except in case of exigency, when, in the discretion of the Secretary of the Interior, who shall make official record of the facts constituting the exigency, and shall report the same to Congress at its next session, he may direct that purchases may be made in open market in amount not exceeding three thousand dollars at any one purchase: <i>Provided,</i> That supplies may be purchased, contracts let, and labor employed for the construction of artesian wells, ditches, and other works for irrigation, in the discretion of the Secretary of the Interior, without advertising as hereinbefore provided: <i>Provided further,</i> That as far as practicable Indian labor shall be employed and purchases in the open market made from Indians, under the direction of the Secretary of the Interior.
Exception.	
<i>Provisos.</i> Irrigation.	
Open-market purchases, etc.	
Use of surplus for subsistence deficiencies.	That the Secretary of the Interior, under the direction of the President, may use any surplus that may remain in any of the appropriations herein made for the purchase of subsistence for the several Indian tribes, to an amount not exceeding twenty-five thousand dollars in the aggregate, to supply any subsistence deficiency that may occur: <i>Provided,</i> That any diversions which shall be made under authority of this section shall be reported to Congress with the reason therefor in detail, at the session of Congress next succeeding such diversion: <i>Provided further,</i> That the Secretary of the Interior, under direction of the President, may use any sums appropriated in this Act for subsistence, and not absolutely necessary for that purpose, for the purchase of stock cattle for the benefit of the tribe for which such appropriation is made, and shall report to Congress, at its next session thereafter, an account of his action under this provision: <i>Provided further,</i> That funds appropriated to fulfill treaty obligations shall not be so used: <i>Provided further,</i> That in lieu of the milch cows, mares, and implements to be issued to Sioux allottees under the provisions of section seventeen of the "Act to divide a portion of the reservation of the Sioux nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes," approved March second, eighteen hundred and eighty-nine, the Secretary of the Interior may, in his discretion, issue to any allottee entitled to benefits under said section who shall petition therefor an equal value in good stock cattle.
<i>Provisos.</i> Report of diversions.	
Stock cattle from subsistence funds.	
Treaty funds.	
Stock cattle to Sioux.	
Vol. 25, p. 895.	
Extension of time to settlers in Minnesota.	That the homestead settlers on all ceded Indian reservations in Minnesota who purchased the lands occupied by them as homesteads be, and they hereby are, granted an extension of one year's time in which to make the payments now provided by law.
Transfer of funds for employees, etc.	That when not required for the purpose for which appropriated, the funds herein provided for the pay of specified employees at any agency may be used by the Secretary of the Interior for the pay of other

employees at such agency, but no deficiency shall be thereby created; and, when necessary, specified employees may be detailed for other service when not required for the duty for which they were engaged; and that the several appropriations herein or heretofore made for millers, blacksmiths, engineers, carpenters, physicians, and other persons, and for various articles provided for by treaty stipulation for the several Indian tribes, may be diverted to other uses for the benefit of said tribes, respectively, within the discretion of the President, and with the consent of said tribes, expressed in the usual manner; and that he cause report to be made to Congress, at its next session thereafter, of his action under this provision.

That whenever after advertising for bids for supplies in accordance with the provisions of this Act those received for any article contain conditions detrimental to the interests of the Government, they may be rejected, and the articles specified in such bids purchased in open market, at prices not to exceed those of the lowest bidder, and not to exceed the market price of the same, until such time as satisfactory bids can be obtained, for which immediate advertisement shall be made: *Provided*, That so much of the appropriations herein made as may be required to pay for goods and supplies, for expenses incident to their purchase, and for transportation of the same, for the year ending June thirtieth, nineteen hundred and seven, shall be immediately available, but no such goods or supplies shall be distributed or delivered to any of said Indians prior to July first, nineteen hundred and six.

That the Act entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and is hereby, amended by adding the following:

No lands acquired under the provisions of this Act shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor.

That no money accruing from any lease or sale of lands held in trust by the United States for any Indian shall become liable for the payment of any debt of, or claim against, such Indian contracted or arising during such trust period, or, in case of a minor, during his minority, except with the approval and consent of the Secretary of the Interior.

That the shares of money due minor Indians as their proportion of the proceeds from the sale of ceded or tribal Indian lands, whenever such shares have been, or shall hereafter be, withheld from their parents, legal guardians, or others, and retained in the United States Treasury by direction of the Secretary of the Interior, shall draw interest at the rate of three per centum per annum, unless otherwise provided for, from the period when such proceeds have been or shall be distributed per capita among the members of the tribe of which such minor is a member; and the Secretary of the Treasury is hereby authorized and directed to allow interest on such unpaid amounts belonging to said minors as shall be certified by the Secretary of the Interior as entitled to draw interest under this Act.

That any Indian allotted lands under any law or treaty without the power of alienation, and within a reclamation project approved by the Secretary of the Interior, may sell and convey any part thereof, under rules and regulations prescribed by the Secretary of the Interior, but such conveyance shall be subject to his approval, and when so approved shall convey full title to the purchaser the same as if final patent without restrictions had been issued to the allottee: *Provided*, That the consideration shall be placed in the Treasury of the United States, and used by the Commissioner of Indian Affairs to pay the construc-

Rejection of bids.

Open-market purchases.

*Proviso.*  
Amount for supplies immediately available.Allotments in severalty.  
Vol. 24, p. 388.

Lands not liable for prior debts.

Trust funds.

Interest on funds held for minors.

Sales within reclamation projects.

*Proviso.*  
Proceeds.



tion charges that may be assessed against the unsold part of the allotment, and to pay the maintenance charges thereon during the trust period, and any surplus shall be a benefit running with the water right to be paid to the holder thereof.

Commissioner.

COMMISSIONER.

Irrigation.

For construction of ditches and reservoirs, purchase and use of irrigating tools and appliances, and purchase of water rights on Indian reservations, in the discretion of the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior and subject to his control, one hundred and fifty-five thousand dollars, of which twenty-five thousand dollars shall be made immediately available: *Provided*, That the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation, who shall be skilled irrigation engineers, not to exceed four, as in his judgment may be necessary to secure the construction of ditches and other irrigation works in a substantial and workmanlike manner.

*Proviso.*  
Skilled engineers.

Surveying and allotting.

For survey and subdivision of Indian reservations and of lands to be allotted to Indians, and to make allotments in severalty, to be expended by the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, fifteen thousand dollars.

Tuberculosis sanitarium.  
Investigation, etc., for.

That the Commissioner of Indian Affairs, under the supervision of the Secretary of the Interior, is hereby authorized to investigate and report to Congress upon the desirability of establishing a sanitarium for the treatment of such Indians as are afflicted with tuberculosis, and to report upon a location and the cost thereof, and also upon the feasibility of utilizing some present Government institution therefor; said report to include, as far as possible, the extent of the prevalence of tuberculosis among Indians.

Indian Reform School.  
Designation to be made.

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, is hereby authorized and directed to select and designate some one of the schools or other institution herein specifically provided for as an "Indian Reform School," and to make all needful rules and regulations for its conduct, and the placing of Indian youth therein: *Provided*, That the appropriation for collection and transportation, and so forth, of pupils, and the specific appropriation for such school so selected shall be available for its support and maintenance: *Provided further*, That the consent of parents, guardians, or next of kin shall not be required to place Indian youth in said school.

*Provisos.*  
Funds available.

Consent of parents, etc., not necessary.

Annual report modified.  
Vol. 19, p. 199.

That so much of the section three of the Act of August fifteenth, eighteen hundred and seventy-six, as required the Commissioner of Indian Affairs to embody in his annual report a detailed and tabular statement of all bids and proposals received for any services, supplies, and annuity goods for the Indian service, together with a detailed statement of all awards of contracts made for any such services, supplies, and annuity goods for which said bids or proposals were received, is hereby repealed, and hereafter he shall embody in his annual report only a detailed statement of the awards of contracts made for any services, supplies, and annuity goods for the Indian service; and that so much of the Acts of March second, eighteen hundred and ninety-two, and April twenty-first, nineteen hundred and four, which require the Commissioner to report annually the names of all employees in the Indian service is hereby also repealed.

Detailed statement of contracts.

Reporting employees repealed.  
Vol. 27, p. 5.  
Vol. 33, p. 217.

Suppressing liquor traffic.

To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to take action to suppress the traffic of intoxicating liquors among Indians, twenty-five thousand dollars, fifteen thousand dollars of which to be used exclusively in the Indian Territory and Oklahoma.



For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, one million three hundred thousand dollars;

Support of schools.

For construction, purchase, lease, and repair of school buildings, and sewerage, water supply, and lighting plants, and purchase of school sites, and improvement of buildings and grounds, four hundred and fifty thousand dollars;

Buildings, construction, etc.

In all, one million seven hundred and fifty thousand dollars.

For collection and transportation of pupils to and from Indian schools, and also for the transportation of Indian pupils from all the Indian schools and placing of them, with the consent of their parents, under the care and control of such suitable white families as may in all respects be qualified to give such pupils moral, industrial, and educational training, under arrangements in which their proper care, support, and education shall be in exchange for their labor, sixty thousand dollars: *Provided*, That not exceeding five thousand dollars of this amount may be used under direction of the Commissioner of Indian Affairs in the transportation and placing of Indian pupils in positions where remunerative employment can be found for them in industrial pursuits. The provisions of this section shall apply to native pupils brought from Alaska.

Transporting pupils.

*Proviso.*  
Positions for pupils.

Alaska natives.

That all expenditure of money appropriated for school purposes in this Act shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision and control of the Secretary of the Interior: *Provided*, That not more than one hundred and sixty-seven dollars shall be expended for the annual support and education of any one pupil in any school herein specifically provided for, except when, by reason of epidemic, accident, or other sufficient cause, the attendance is so reduced or cost of maintenance so high that a larger expenditure is absolutely necessary for the efficient operation of the school affected, when the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may allow a larger per capita expenditure, such expenditure to continue only so long as the said necessity therefor shall exist: *Provided further*, That the total amount appropriated for the support of such school shall not be exceeded: *Provided further*, That the number of pupils in any school entitled to the per capita allowance hereby provided for shall be determined by taking the average enrollment for the entire fiscal year and not any fractional part thereof.

Supervision of expenditures.

*Provisos.*  
Limit per capita expense.

Total for school.

Determining per capita allowance.

MISCELLANEOUS.

Telegraphing, telephoning, and purchase of Indian supplies: To pay the expense of purchasing goods and supplies for the Indian service, including inspection and pay of necessary employees; advertising, at rates not exceeding regular commercial rates, and all other expenses connected therewith, and for telegraphing and telephoning, and for transportation of Indian goods and supplies, including pay and expenses of transportation agents and rent of warehouses, two hundred and ninety thousand dollars, and warehouses for the receipt, storage, and shipping of goods for the Indian service shall be maintained at the following places: New York, Chicago, Omaha, Saint Louis, and San Francisco.

Supplies.  
All expenses.

Warehouses.

For buildings and repairs of buildings at agencies and for rent of buildings for agency purposes, and for water supply at agencies, seventy-five thousand dollars.

Agency buildings.

Vaccination.	For pure vaccine matter and vaccination of Indians, five thousand dollars.
Printing in schools. R. S., sec. 3786, p. 744.	That the provisions of section thirty-seven hundred and eighty-six of the Revised Statutes of the United States shall not apply to such work of the Indian Department as can be executed at the several Indian schools.
Right of way through Indian lands. Vol. 30, p. 990, amended.	That section two of an Act of Congress entitled "An Act to provide for the acquiring of rights of way of railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes," approved March second, eighteen hundred and ninety-nine, be, and the same hereby is, amended so as to read as follows:
Width.	"SEC. 2. That such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it shall not exceed one hundred feet in width on each side of the road, and may include grounds adjacent thereto for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, not to exceed two hundred feet in width by a length of three thousand feet, and not more than one station to be located within any one continuous length of ten miles of road."
For stations, etc., increased.	

General officers and  
employees.

## II. GENERAL OFFICERS AND EMPLOYEES.

### BOARD OF INDIAN COMMISSIONERS.

Citizen commission. Vol. 16, p. 40.	For expenses of the commission of citizens, serving without compensation, appointed by the President under the provisions of the fourth section of the Act of April tenth, eighteen hundred and sixty-nine, four thousand dollars, of which amount not to exceed three hundred dollars may be used by the commission for office rent.
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### INSPECTORS.

Inspectors. Irrigation.	For pay of eight Indian inspectors, two of whom shall be engineers, one to be designated as chief, competent in the location, construction, and maintenance of irrigation works, at two thousand five hundred dollars per annum each, except the chief engineer, who shall receive three thousand five hundred dollars, twenty-one thousand dollars.
Expenses.	For traveling expenses of eight Indian inspectors, at three dollars per day when actually employed on duty in the field, exclusive of transportation and sleeping-car fare, in lieu of all other expenses now authorized by law, and for incidental expenses of negotiation, inspection, and investigation, including telegraphing and expenses of going to and going from the seat of government, and while remaining there under orders and direction of the Secretary of the Interior, for a period not to exceed twenty days, twelve thousand eight hundred dollars.

### SUPERINTENDENT OF INDIAN SCHOOLS.

Superintendent of schools.	For pay of one superintendent of Indian schools, three thousand dollars.
Expenses.	For necessary traveling expenses of one superintendent of Indian schools, including telegraphing and incidental expenses of inspection and investigation, one thousand five hundred dollars: <i>Provided</i> , That he shall be allowed three dollars per day for traveling expenses when actually on duty in the field, exclusive of cost of transportation and sleeping-car fare, in lieu of all other expenses now allowed by law: <i>And provided further</i> , That he shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior.
Provisos. Per diem.	
Other duties.	

FIFTY-NINTH CONGRESS. SESS. I. CH. 3504. 1906.

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## INTERPRETERS.

For payment of necessary interpreters, to be distributed in the discretion of the Secretary of the Interior, four thousand dollars; but no person employed by the United States and paid for any other service shall be paid for interpreting.

Interpreters.

## POLICE.

For services of officers at twenty-five dollars per month each, and privates at twenty dollars per month each, of Indian police, to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations and within the Territory of Alaska, in the discretion of the Secretary of the Interior, for the purchase of equipments, and for the purchase of rations for policemen at nonration agencies, two hundred thousand dollars.

Police.

## MATRONS.

To enable the Secretary of the Interior to employ suitable persons as matrons to teach Indian girls in housekeeping and other household duties, at a rate not to exceed sixty dollars per month, and for furnishing necessary equipments, and renting quarters where necessary, twenty-five thousand dollars: *Provided*, That the amount paid said matrons shall not come within the limit for employees fixed by the Act of June seventh, eighteen hundred and ninety-seven.

Matrons.

*Proviso.*  
Additional.  
Vol. 30, p. 90.

## FARMERS AND STOCKMEN.

To enable the Commissioner of Indian Affairs to employ practical farmers and practical stockmen, subject only to such examination as to qualifications as the Secretary of the Interior may prescribe, in addition to the agency farmers now employed, at wages not exceeding seventy-five dollars each per month, to superintend and direct farming and stock raising among such Indians as are making effort for self-support, one hundred and twenty-five thousand dollars: *Provided*, That the amounts paid said farmers and stockmen shall not come within the limit for employees fixed by the Act of June seventh, eighteen hundred and ninety-seven: *Provided further*, That the Commissioner of Indian Affairs may employ additional farmers at any Indian school at not exceeding sixty dollars per month, subject only to such examination as the Secretary of the Interior may prescribe, said farmers to be in addition to the school farmers now employed.

Farmers and stockmen.

*Provisos.*  
Additional.  
Vol. 30, p. 90.

At schools.

## JUDGES.

For compensation of judges of Indian courts, twelve thousand dollars.

Judges, Indian courts.

## CONTINGENCIES.

For contingencies of the Indian Service, including traveling and incidental expenses of Indian agents and of their offices, and of the Commissioner of Indian Affairs; also traveling and incidental expenses of special agents, at three dollars per day when actually employed on duty in the field, exclusive of transportation and sleeping-car fare, in lieu of all other expenses now authorized by law, and expenses of going to and going from the seat of government, and while remaining there under orders and direction of the Commissioner of Indian Affairs, for a period not to exceed twenty days; for pay of employees not otherwise provided for, and for pay of special agents, at two thousand dollars per annum each, seventy-five thousand dollars.

Contingencies.

## INDIAN AGENTS—PROVISO.

Indian agents.  
Salaries not avail-  
able for Army officers.

School superintend-  
ents may act as agents.

Bond.

Arizona.

## ARIZONA.

San Carlos Agency.  
Agent.

Apaches, etc.  
Support, etc.

*Proviso.*  
Balance available.

Pima Agency.  
Support, etc., of In-  
dians.

The appropriations for the salaries of Indian agents shall not take effect nor become available in any case for or during the time in which any officer of the Army of the United States shall be engaged in the performance of the duties of Indian agent at any of the agencies above named; and the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of any Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents.

For pay of Indian agent at the San Carlos Agency, Arizona, one thousand eight hundred dollars.

For support and civilization of the Apache and other Indians in Arizona and New Mexico who have been or may be collected on reservations in Arizona and New Mexico, two hundred and twenty-five thousand dollars: *Provided*, That the unexpended balance for the fiscal year nineteen hundred and six is hereby appropriated and made available for nineteen hundred and seven.

For support and civilization of the Indians of Pima Agency, Arizona, forty thousand dollars, to be expended for their benefit in such manner as the Secretary of the Interior, in his discretion, may deem best.

## FORT MOJAVE SCHOOL.

Fort Mojave school.

For support and education of two hundred Indian pupils at the Indian school at Fort Mojave, Arizona, thirty-three thousand four hundred dollars;

For pay of superintendent of said school, one thousand six hundred dollars;

For general repairs and improvements, five thousand dollars;

For irrigation for farm, five thousand dollars;

In all, forty-five thousand dollars.

## PHOENIX SCHOOL.

Phoenix school.

For support and education of seven hundred Indian pupils at the Indian school at Phoenix, Arizona, one hundred and sixteen thousand nine hundred dollars;

For general repairs and improvements, eight thousand dollars;

For pay of superintendent at said school, two thousand five hundred dollars;

Heating system, sixteen thousand dollars;

In all, one hundred and forty-three thousand four hundred dollars.

## TRUXTON CANYON SCHOOL.

Truxton Canyon  
school.

For support and education of one hundred and thirty-five pupils at the Indian school at Truxton Canyon, Arizona, twenty-two thousand five hundred and forty-five dollars;

Pay of superintendent, one thousand five hundred dollars;

General repairs and improvements, three thousand dollars;

In all, twenty-seven thousand and forty-five dollars.

Incidentals.

For general incidental expenses of the Indian service in Arizona, including traveling expenses of agents, one thousand five hundred dollars.

For the construction of an irrigation system necessary for developing and furnishing a water supply for the irrigation of the lands of the Pima Indians in the vicinity of Sacaton, on the Gila River Indian Reservation, two hundred and fifty thousand dollars, to be expended under the direction of the Secretary of the Interior: *Provided further*, That when said irrigation system is in successful operation, and the Indians have become self-supporting, the cost of operating the said system shall be equitably apportioned upon the lands irrigated, and to the annual charge shall be added an amount sufficient to pay back into the Treasury the cost of the work within thirty years, suitable deduction being made for the amounts received from disposal of lands which now form a part of said reservation.

Gila River Reservation,  
Irrigation.  
*Post*, p. 1022.

*Proviso*,  
Annual charge.

### CALIFORNIA.

California.

For support and civilization of the Mission Indians in California, including pay of employees, five thousand dollars.

Mission Indians.  
Support, etc.

For support and civilization of the Northern Indians, California, ten thousand dollars.

Northern Indians.  
Support, etc.

### SHERMAN INSTITUTE.

For support and education of five hundred Indian pupils at the Sherman Institute, Riverside, California, eighty-three thousand five hundred dollars;

Sherman Institute,  
Riverside.

For pay of superintendent, two thousand two hundred and fifty dollars;

For additional water and sewer system, three thousand dollars;

For addition to dining hall and kitchen, twelve thousand dollars;

For stable, four thousand dollars;

For coal house, two thousand dollars;

For ice and cold storage, six thousand dollars;

For general repairs and improvements, five thousand dollars;

In all, one hundred and seventeen thousand seven hundred and fifty dollars.

For general incidental expenses of the Indian service in California, including traveling expenses of agents, and support and civilization of Indians at the Round Valley, Hoopa Valley, and Tule River agencies, four thousand dollars;

Incidentals.

And pay of employees at same agencies, seven thousand dollars;

In all, eleven thousand dollars.

For the purpose of removing obstructions from the bed of the stream which drains into the Eel River in the Round Valley Reservation, Mendocino County, California, eight thousand dollars.

Round Valley Reservation,  
Improving.  
*Post*, p. 1022.

That the Secretary of the Interior be, and he is hereby, authorized to expend not to exceed one hundred thousand dollars to purchase for the use of the Indians in California now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in said State, suitable tracts or parcels of land, water, and water rights in said State of California, and have constructed the necessary ditches, flumes, and reservoirs for the purpose of irrigating said lands, and the irrigation of any lands now occupied by Indians in said State, and to construct suitable buildings upon said lands, and to fence the tracts of land so purchased, and fence, survey, and mark the boundaries of such Indian reservations in the State of California as the Secretary of the Interior may deem proper. One hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any funds in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

Lands, etc., for Indians.



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## FIFTY-NINTH CONGRESS. SESS. I. CH. 3504. 1906.

Colorado.

## COLORADO.

## FORT LEWIS SCHOOL.

Fort Lewis school.

For the support and education of two hundred Indian pupils at the Indian school at Fort Lewis, Colorado, thirty-three thousand four hundred dollars;

For pay of superintendent at said school, one thousand seven hundred dollars;

For general repairs and improvements, two thousand dollars;

For additional buildings, twenty-five thousand dollars;

In all, sixty-two thousand one hundred dollars.

## GRAND JUNCTION SCHOOL.

Grand Junction school.

For support and education of two hundred Indian pupils at the Indian school at Grand Junction, Colorado, thirty-three thousand four hundred dollars;

Pay of superintendent at said school, one thousand six hundred dollars;

General repairs and improvements, four thousand dollars;

Driveways, one thousand five hundred dollars;

Increase to lighting plant, two thousand dollars;

In all, forty-two thousand dollars.

Incidentals.

For general incidental expenses of the Indian Service in Colorado, including traveling expenses of agents, one thousand dollars.

Idaho.

## IDAHO.

Coeur d'Alene Reservation.

For a superintendent in charge of agency and educational matters on the Coeur d'Alene Reservation, Idaho, one thousand two hundred dollars.

Fort Hall Reservation. Support, etc., of Indians.

For support and civilization of the Shoshones and Bannocks and other Indians of the Fort Hall Reservation in Idaho, including pay of employees, twenty thousand dollars.

Lemhi Agency. Support, etc., of Indians.

For support, civilization, and instruction of the Shoshones, Bannocks, Sheepeaters, and other Indians of the Lemhi Agency, Idaho, including pay of employees, ten thousand dollars.

Nez Perces. Leases permitted.

That if any adult member of the Nez Perce tribe of Indians in Idaho believes himself or herself competent to make leases and transact his or her affairs, such member may file a request with the Commissioner of Indian Affairs for a permit to lease the lands which have been allotted to him or her and the minor children of such member.

Certificate.

And if upon consideration and examination of the request the said Commissioner finds said member to be fully competent and capable of managing and caring for his or her own individual affairs, he may issue a certificate to such member authorizing him or her to make leases or rental contracts for the lands allotted to such member and his or her minor children.

Surveys, Fort Hall and Lemhi reservations.

That there be appropriated from the moneys of the United States Treasury not otherwise appropriated the sum of twenty-five thousand dollars for completing the survey on the Fort Lemhi and the Fort Hall Indian reservations, in Idaho; including expenses in the office of the surveyor-general for Idaho, and for the examination of said surveys; and for a reconnoissance survey and preparation of plans for an irrigation system and storage system for Indian lands and lands ceded by the Act of June sixth, nineteen hundred, on the Fort Hall Reservation, in Idaho.

Irrigation plan.

Vol. 31, p. 672.

Lemhi Reservation.

That before any of the lands in the Lemhi Reservation, in Idaho, ceded by the agreement concluded on May fourteenth, eighteen hun-

**ADD10**

April 29, 1908.  
[S. 5262.]

[Public, No. 103.]

Philippine Islands.  
Interisland traffic.  
Power to regulate,  
granted temporarily  
to Philippine govern-  
ment.

Tonnage tax on for-  
eign vessels to United  
States.

Restrictions on for-  
eign vessels removed.

Licenses to harbor  
vessels.

Philippine govern-  
ment to enforce navi-  
gation laws.

Repeal.  
Vol. 34, p. 154.

**CHAP. 152.**—An Act To repeal an Act approved April thirtieth, nineteen hundred and six, entitled “An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes,” and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago.

**SEC. 2.** That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.

**SEC. 3.** That the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Islands and the United States.

**SEC. 4.** That the Philippine Commission shall be authorized and empowered to issue licenses to engage in lighterage or other exclusively harbor business to vessels or other craft actually engaged in such business at the date of the passage of this Act and to vessels or other craft built in the Philippine Islands or in the United States and owned by citizens of the United States or by inhabitants of the Philippine Islands.

**SEC. 5.** That such of the navigation laws of the United States as are in force in the Philippine Islands in regard to vessels arriving in the Philippine Islands from the mainland territory and other insular possessions of the United States shall continue to be administered by the proper officials of the government of the Philippine Islands.

**SEC. 6.** That the Act entitled “An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Islands, between ports or places in the Philippine Islands, and for other purposes,” approved April thirtieth, nineteen hundred and six, and all laws and parts of laws in conflict with the provisions of this Act, are hereby repealed.

Approved, April 29, 1908.

April 30, 1908.  
[H. R. 15219.]

[Public, No. 104.]

Indian Department  
appropriations.

**CHAP. 153.**—An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and nine.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and in full compensation for all offices the salaries for which are specially provided for herein for the service of the fiscal year ending June thirtieth, nineteen hundred and nine, namely:

General provisions.

Under the Presi-  
dent.

Allotments in sever-  
alty.  
Vol. 24, p. 388.

## I. GENERAL PROVISIONS.

### PRESIDENT.

To enable the President to cause, under the provisions of the Act of February eighth, eighteen hundred and eighty-seven, entitled “An

Act to provide for the allotment of lands in severalty to Indians," such Indian reservations as in his judgment are advantageous for agricultural and grazing purposes to be surveyed or resurveyed, for the purposes of said Act, and to complete the allotment of the same, including the necessary clerical work incident thereto in the field and in the Office of Indian Affairs, and delivery of trust patents, so far as allotments shall have been selected under said Act, seventy-five thousand dollars, of which fifteen thousand dollars shall be immediately available.

#### SECRETARY.

Under the Secretary.

That no purchase of supplies for which appropriations are herein or hereinafter made for the Indian service, exceeding in the aggregate five hundred dollars in value at any one time, shall be made without first giving at least three weeks' public notice by advertisement, except in case of exigency, when, in the discretion of the Secretary of the Interior, who shall make official record of the facts constituting the exigency, and shall report the same to Congress at its next session, he may direct that purchases may be made in open market in amount not exceeding three thousand dollars at any one purchase: *Provided*, That hereafter supplies may be purchased, contracts let, and labor employed for the construction of artesian wells, ditches, and other works for irrigation, not to exceed the sum of five thousand dollars in any one purchase or contract, in the discretion of the Secretary of the Interior, without advertising as hereinbefore provided: *Provided further*, That as far as practicable Indian labor shall be employed and purchase in the open market made from Indians, under the direction of the Secretary of the Interior.

Purchase of supplies to be advertised.

Exception.

*Provisos.*  
Irrigation.

Indian labor, etc.

Disbursing officers' bonds.

Acceptance of new bond releases sureties on prior bond.

Hereafter when the Secretary of the Interior deems a new bond necessary he may, in his discretion, require any disbursing officer under the jurisdiction of the Commissioner of Indian Affairs to execute a new bond, with approved sureties, in such amount as he may deem necessary, and when accepted and approved by the Secretary of the Interior the new bond shall be valid and the surety or sureties of the prior bond shall be released from liability for all acts or defaults of the principal which may be done or committed from and after the day on which the new bond was approved.

The Secretary of the Interior shall take possession of all buildings on lands belonging to the Five Civilized Tribes, now or heretofore used for governmental, school, or other tribal purposes, together with the furniture therein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe and deposit the proceeds, less expenses incident to the appraisement and sale, in the Treasury of the United States, to the credit of the tribes respectively owning the said land and improvements, and immediately after any such sale patents for the realty thus sold shall be made and delivered in the same manner as now provided by law for other tribal property: *Provided*, That when practicable preference right shall be given to the State, counties and municipalities of Oklahoma to purchase said lands and improvements at the appraised value: *And provided*, That pending such appraisement and sale the Secretary of the Interior may temporarily lease said buildings and lands for the benefit of the tribes respectively to which they belong.

Five Civilized Tribes.  
Buildings, etc., on lands of, may be sold.

Use of proceeds.

Patents in fee.

*Provisos.*  
Preference rights.

Temporary leases.

#### COMMISSIONER.

Under the Commissioner.

For construction of ditches and reservoirs, purchase and use of irrigating tools and appliances and water rights, including lands necessary for canals, pipe lines, and reservoirs, for Indian reservations, in the discretion of the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior and subject to his control.

Irrigation.

# ADD12



<i>Proviso.</i> Superintendents.	two hundred thousand dollars, of which twenty-five thousand dollars shall be immediately available: <i>Provided</i> , That the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation, who shall be skilled irrigation engineers, not to exceed five, as in his judgment may be necessary to secure the construction of ditches and other irrigation works in a substantial and workmanlike manner.
Surveying and allotting.	For survey and subdivision of Indian reservations and of lands to be allotted to Indians, and to make allotments in severalty, to be expended by the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, seventy-five thousand dollars, of which fifteen thousand dollars shall be immediately available.
Suppressing liquor traffic.	To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to take action to suppress the traffic in intoxicating liquors among Indians, forty thousand dollars;
Support of schools.	For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, one million four hundred thousand dollars;
Construction of buildings, etc.	For construction, purchase, lease, and repair of school buildings, and for sewerage, water supply, and lighting plants, and purchase of school sites, and improvement of buildings and grounds, four hundred thousand dollars;
Transporting pupils.	In all, two million, one hundred and fifteen thousand dollars. For collection and transportation of pupils to and from Indian schools, and also for the transportation of Indian pupils from all the Indian schools and placing of them, with the consent of their parents, under the care and control of such suitable white families as may in all respects be qualified to give such pupils moral, industrial, and educational training, seventy-five thousand dollars: <i>Provided</i> , That not exceeding five thousand dollars of this amount may be used; under direction of the Commissioner of Indian Affairs, in the transportation and placing of Indian pupils in positions where remunerative employment can be found for them in industrial pursuits. The provisions of this section shall apply to native pupils brought from Alaska.
<i>Proviso.</i> Positions for pupils.	To enable the Commissioner of Indian Affairs, from time to time as he may deem necessary, to detail clerks from his office to make special investigations in the field: <i>Provided</i> , That while thus absent from Washington under such detail they shall receive a per diem of three dollars to cover all expenses, exclusive of transportation and sleeping-car fares, three thousand dollars.
Alaska natives.	To enable the Commissioner of Indian Affairs to conduct experiments on Indian school or agency farms, designed to test the possibility of soil, climate, and so forth, in the cultivation of trees, grains, vegetables and fruits not hitherto raised in those neighborhoods, using Indian labor in the process, five thousand dollars.
Special investigations.	That all expenditure of money herein or hereafter appropriated for school purposes among the Indians, shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision of the Secretary of the Interior: <i>Provided</i> , That, except for pay of superintendents, not more than one hundred and sixty-seven dollars shall be expended for the annual support and education of any one pupil in any school herein specifically provided for, except when, by reason of epidemic, accident, or other sufficient cause, the attendance is so reduced or cost of maintenance so high that a larger expenditure is absolutely necessary, when the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may allow
<i>Proviso.</i> Per diem.	a larger per capita expenditure: <i>Provided further</i> , That the total
Experimental tests of soils, etc.	
Supervision of expenditures.	
<i>Provisos.</i> Limit of per capita expense.	
Total for school.	

amount appropriated for the support of such school shall not be exceeded: *Provided further*, That the number of pupils in any school entitled to the per capita allowance hereby provided for shall be determined by taking the average enrollment for the entire fiscal year and not any fractional part thereof.

Determining per capita allowance.

There shall not be paid out of any appropriation, made in this Act, any greater rate of annual compensation to any superintendent of Indian schools during the fiscal year nineteen hundred and nine, than is authorized and paid out of appropriations made for the fiscal year nineteen hundred and eight.

Annual compensation of superintendents restricted.

The Commissioner of Indian Affairs is hereby authorized, under the direction of the Secretary of the Interior, to ascertain whether and upon what terms it may be possible to dispose of any of the nonreservation Indian schools which in his judgment are no longer of value to the Indian Service, and to report the result of his investigations to the next session of the Congress.

Disposal of nonreservation schools.

Investigation and report to Congress.

That hereafter any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such national bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to said disbursing agent a bond, with approved surety, in such an amount as will properly safeguard the funds to be deposited. Such bond shall be subject to the approval of the Secretary of the Interior.

Disbursing agents may select banks of deposit for Indian funds.

*Proviso.*  
Bond.

That the Commissioner of Indian Affairs is hereby authorized to send a special Indian agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper.

Negotiations for commutation of perpetual annuities authorized.

#### MISCELLANEOUS.

Miscellaneous.

Telegraphing, telephoning, and purchase of Indian supplies: To pay the expense of purchasing goods and supplies for the Indian Service, including inspection, pay of necessary employees, and all other expenses connected therewith; advertising, at rates not exceeding regular commercial rates; telegraphing and telephoning; and transporting Indian goods and supplies, including expenses of transportation agents and rent of warehouses, three hundred and fifteen thousand dollars: *Provided*, That hereafter warehouses for the receipt, storage, and shipment of goods for the Indian Service shall be maintained at the following places: New York, Chicago, Omaha, Saint Louis, and San Francisco: *Provided further*, That hereafter payment for transportation of Indian goods and supplies shall include all Indian transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid to said land-grant roads: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That hereafter in expending money appropriated for this purpose a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public lands to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and

Supplies.  
All expenses.

Warehouses.

*Proviso.*  
Locations.

Transportation of Indian goods, etc., payments for, to land-grant railroads restricted.

Basis for computing compensation.

Fifty per cent to roads not bond aided.

also subject to such regulations as Congress may impose, restricting the charge for such Government transportation, having claims against the United States for transportation of Indian goods and supplies over such aided railroads, shall be paid out of the moneys appropriated for such purpose only on the basis of such rate for the transportation of such Indian goods and supplies as the Secretary of the Interior shall deem just and reasonable under the provisions set forth herein, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service.

Agency buildings.

For buildings and repairs of buildings at agencies, and for rent of buildings for agency purposes, and for water supply at agencies, seventy-five thousand dollars.

Vaccination.

For pure vaccine matter and vaccination of Indians, five thousand dollars.

General officers and employees.

## II. GENERAL OFFICERS AND EMPLOYEES

### BOARD OF INDIAN COMMISSIONERS.

Citizen commission.

For expenses of the commission of citizens, serving without compensation, appointed by the President under the provisions of the fourth section of the Act of April tenth, eighteen hundred and sixty-nine, four thousand dollars, of which amount not to exceed three hundred dollars may be used by the commission for office rent.

Vol. 16, p. 40.

### INSPECTORS.

Inspectors.  
Irrigation engi-  
neers.

For pay of eight Indian inspectors, two of whom shall be engineers, one to be designated as chief, competent in the location, construction, and maintenance of irrigation works, at two thousand five hundred dollars per annum each, except the chief engineer, who shall receive three thousand five hundred dollars, twenty-one thousand dollars.

Expenses.

For traveling expenses of eight Indian inspectors, at three dollars per day when actually employed on duty in the field, exclusive of transportation and sleeping-car fare, in lieu of all other expenses now authorized by law, and for incidental expenses of negotiation, inspection, and investigation, including telegraphing and expenses of going to and going from the seat of government, and while remaining there under orders and direction of the Secretary of the Interior, for a period not to exceed twenty days, twelve thousand eight hundred dollars.

### SUPERINTENDENT OF INDIAN SCHOOLS.

Superintendent of  
schools.

For pay of one superintendent of Indian schools, three thousand dollars.

Expenses.

For necessary traveling expenses of one superintendent of Indian schools, including telegraphing and incidental expenses of inspection and investigation, one thousand five hundred dollars: *Provided*, That he shall be allowed three dollars per day for traveling expenses when actually on duty in the field, exclusive of cost of transportation and sleeping-car fare in lieu of all other expenses now allowed by law.

*Proviso.*  
Per diem.

### INTERPRETERS.

Interpreters.

For payment of necessary interpreters, to be distributed in the discretion of the Secretary of the Interior, four thousand dollars; but no person employed by the United States and paid for any other service shall be paid for interpreting.

## POLICE.

For services of officers at twenty-five dollars per month each, and privates at twenty dollars per month each, of Indian police, to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations and within the Territory of Alaska, in the discretion of the Secretary of the Interior, for the purchase of equipments, and for the purchase of rations for policemen at nonration agencies, two hundred thousand dollars.

Police.

## MATRONS.

To enable the Secretary of the Interior to employ suitable persons as matrons to teach Indian girls in housekeeping and other household duties, at a rate not to exceed sixty dollars per month, and for furnishing necessary equipments, and renting quarters where necessary, thirty thousand dollars: *Provided*, That the amount paid said matrons shall not come within the limit for employees fixed by the Act of June seventh, eighteen hundred and ninety-seven.

Matrons.

*Proviso.*  
Additional.  
Vol. 30, p. 90.

## FARMERS AND STOCKMEN.

To enable the Commissioner of Indian Affairs to employ practical farmers and practical stockmen, subject only to such examination as to qualifications as the Secretary of the Interior may prescribe, in addition to the agency farmers now employed, at wages not exceeding seventy-five dollars each per month, to superintend and direct farming and stock raising among such Indians as are making effort for self-support, one hundred and twenty-five thousand dollars: *Provided*, That the amounts paid such farmers and stockmen shall not come within the limit for employees fixed by the Act of June seventh, eighteen hundred and ninety-seven: *Provided further*, That the Commissioner of Indian Affairs may employ additional farmers at any Indian school at not exceeding sixty dollars per month, subject only to such examination as to qualifications as the Secretary of the Interior may prescribe, said farmers to be in addition to the school farmers now employed.

Farmers and stockmen.

*Provisos.*  
Additional.  
Vol. 30, p. 90.

At schools.

## JUDGES.

For compensation of judges of Indian courts, twelve thousand dollars.

Judges, Indian courts.

## CONTINGENCIES.

For contingencies of the Indian Service, including traveling and incidental expenses of Indian agents and of their offices, and of the Commissioner of Indian Affairs; also traveling and incidental expenses of special agents, at three dollars per day when actually employed on duty in the field, exclusive of transportation and sleeping-car fare, in lieu of all other expenses now authorized by law, and expenses of going to and going from the seat of government, and while remaining there under orders and direction of the Commissioner of Indian Affairs, for a period not to exceed twenty days; for pay of employees not otherwise provided for, and for pay of special agents, at two thousand dollars per annum each, eighty-five thousand dollars: *Provided*, That hereafter the expense of procuring the official bond of any agent, superintendent, or other disbursing officer of the Indian Service shall be paid by the United States.

Contingencies.

*Proviso.*  
United States to pay  
cost of bonds of agents,  
etc.

## ARIZONA.

Arizona.

For pay of Indian agent at the San Carlos Agency, Arizona, one thousand eight hundred dollars.

San Carlos Agency agent.

For support and civilization of the Apache and other Indians in Arizona and New Mexico who have been or may be collected on

Apaches, etc.  
Support, etc.**ADD16**

*Proviso.*  
Balance available.

Pima Agency.  
Support, etc., of In-  
dians.

reservations in Arizona and New Mexico, three hundred thousand dollars: *Provided*, That the unexpended balance for the fiscal year nineteen hundred and eight is hereby appropriated and made available for nineteen hundred and nine.

For support and civilization of the Indians of Pima Agency, Arizona, forty thousand dollars, to be expended for their benefit in such manner as the Secretary of the Interior, in his discretion, may deem best.

#### FORT MOJAVE SCHOOL.

Fort Mojave school.

For support and education of two hundred Indian pupils at the Indian school at Fort Mojave, Arizona, and for pay of superintendent of said school, thirty-five thousand dollars;

For general repairs and improvements, three thousand dollars;

For repair of water system, three thousand dollars;

For purchase of steam boiler, two thousand dollars;

In all, forty-three thousand dollars.

#### PHOENIX SCHOOL.

Phoenix school.

For support and education of seven hundred Indian pupils at the Indian school at Phoenix, Arizona, and for pay of superintendent, one hundred and nineteen thousand four hundred dollars;

For improvement of power and heating plant, to be immediately available, nine thousand dollars;

For general repairs and improvements, eight thousand dollars;

In all, one hundred and thirty-six thousand four hundred dollars.

#### TRUXTON CANYON SCHOOL.

Truxton Canyon  
school.

For support and education of one hundred pupils at the Indian school at Truxton Canyon, Arizona, and for pay of superintendent, eighteen thousand two hundred dollars;

General repairs and improvements, one thousand dollars;

In all, nineteen thousand two hundred dollars.

Incidentals.

For general incidental expenses of the Indian Service in Arizona, including traveling expenses of agents, one thousand five hundred dollars.

California.

#### CALIFORNIA.

Mission Indians.  
Support, etc.

For support and civilization of the Mission Indians in California, including pay of employees, fifteen thousand dollars, part of which may be used for making improvements on lands in the use and occupation of Indians in southern California.

Northern Indians.  
Support, etc.

For support and civilization of the northern Indians, California, twenty thousand dollars, part of which may be used for making improvements on lands in the use and occupation of Indians in northern California.

Purchase of tillable  
land for certain  
Indians.

That the Secretary of the Interior be, and he is hereby, authorized to expend not to exceed fifty thousand dollars to purchase for the use of the Indians in California now residing on reservations which do not contain land suitable for cultivation and for Indians who are not now upon reservations in said State suitable tracts or parcels of land, water, and water rights in said State of California, and have constructed the necessary ditches, flumes, and reservoirs for the purpose of irrigating said lands and the irrigation of any lands now occupied by Indians in said State, and to construct suitable buildings upon said lands and to fence the tracts so purchased, and to fence, survey, and mark the boundaries of such Indian reservations in the State of California as

Irrigation.



the Secretary of the Interior may deem proper. And there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of fifty thousand dollars, or so much thereof as may be necessary, for the purpose of carrying out the provisions of this Act: *Provided*, That this appropriation shall be so expended as to make further appropriation for this purpose unnecessary.

Amount.

*Proviso.*  
Restriction.

SHERMAN INSTITUTE.

For support and education of five hundred Indian pupils at the Sherman Institute, Riverside, California, and for pay of superintendent, eighty-six thousand dollars;

Sherman Institute.

For general repairs and improvements, ten thousand dollars;

For additional water and sewer system, three thousand dollars;

For addition to storehouse, four thousand dollars;

In all, one hundred and three thousand dollars.

For general incidental expenses of the Indian Service in California, including traveling expenses of agents, and support and civilization of Indians at the Round Valley, Hoopa Valley, and Tule River agencies, four thousand dollars;

Incidentals.

And pay of employees at same agencies, seven thousand dollars;

In all, eleven thousand dollars.

That one thousand dollars of the unexpended balance of eight thousand dollars appropriated by the Acts of June twenty-first, nineteen hundred and six (Thirty-fourth Statutes, page three hundred and thirty-three), and March first, nineteen hundred and seven (Thirty-fourth Statutes, page one thousand and twenty-two), for the purpose of removing obstructions both within and without the reservation from the bed of the stream which flows through the Round Valley Reservation, Mendocino County, California, and drains into Eel River, be, and the same is hereby, reappropriated and made available for use during the fiscal year ending June thirtieth, nineteen hundred and nine.

Round Valley  
Reservation.  
Removal of obstructions.  
Balance available.

Vol. 34, pp. 333, 1022.

That the sum of ten thousand dollars, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, for the construction of a wagon road on the Hoopa Valley Indian Reservation, in the State of California, including necessary surveys, transportation, purchase of materials and tools, and for the subsistence of Indians furnishing labor, including forage for their animals, the labor for said construction to be performed as far as practicable by the Indians for the reservation: *Provided*, That no part of this appropriation shall be available until the proper officer of the Indian Bureau shall investigate and report that the work contemplated can be completed for the amount herein appropriated.

Hoopa Valley  
Indian Reservation,  
Cal.  
Wagon road to be  
constructed on.

*Proviso.*  
Investigation and  
report.

There is hereby appropriated the sum of ten thousand dollars for the Indians of the Yuma Reservation, to be expended for their benefit in such manner and for such purposes as the Secretary of the Interior may prescribe, said sum to be reimbursable out of the proceeds derived from the sale of their lands; there is also appropriated out of any money in the Treasury not otherwise appropriated, the further sum of five thousand dollars, or so much thereof as may be necessary, to enable the Secretary of the Interior to reserve and set apart lands for town-site purposes in the Yuma Indian Reservation, California, and the Colorado River Indian Reservation in California and Arizona, and to survey, plat, and sell the tracts so set apart in such manner as he may prescribe, the net proceeds to be deposited in the Treasury of the United States to the credit of the Indians of the reservations, respectively, to be reimbursed out of the funds arising from the sale of the lands.

Yuma Reservation  
Indians.

Town sites.  
Yuma and Colorado  
River reservations.

## Colorado.

## COLORADO.

## GRAND JUNCTION SCHOOL.

Grand Junction school.

For support and education of two hundred Indian pupils at the Indian school at Grand Junction, Colorado, and for pay of superintendent, thirty-five thousand dollars;

General repairs and improvements, six thousand dollars;

In all, forty-one thousand dollars.

## FORT LEWIS SCHOOL.

Fort Lewis school.

For the support and education of two hundred Indian pupils at the Indian school at Fort Lewis, Colorado, and for pay of superintendent, thirty-five thousand one hundred dollars;

For general repairs and improvements, three thousand seven hundred dollars;

In all, thirty-eight thousand eight hundred dollars.

Incidentals.

For general incidental expenses of the Indian Service in Colorado, including traveling expenses of agents, one thousand dollars.

## Idaho.

## IDAHO.

Coeur d'Alene Reservation. Superintendent.

For a superintendent in charge of agency and educational matters on the Coeur d'Alene Reservation, Idaho, one thousand two hundred dollars.

Fort Hall Reservation. Support, etc., of eaters, and other Indians.

For support and civilization of the Shoshones and Bannocks, Sheep-eaters, and other Indians of the Fort Hall Reservation in Idaho, including pay of employees, thirty thousand dollars.

Incidentals.

For general incidental expenses of the Indian Service in Idaho, including traveling expenses of agents, one thousand dollars.

Fort Hall Reservation. Irrigation. Vol. 34, p. 1024.

For carrying out the provisions of the Act of March first, nineteen hundred and seven (Thirty-fourth Statutes at Large, page one thousand and four) authorizing the Secretary of the Interior to acquire lands and other property necessary in constructing a reservoir for storing water for the purpose of irrigating lands on the Fort Hall Reservation in Idaho and those ceded by the Indians of said reservation and for construction of the system determined on, one hundred thousand dollars.

Coeur d'Alene Reservation. Additional ground for railroad station granted.

That the Chicago, Milwaukee and Saint Paul Railway Company of Idaho is hereby authorized to locate, subject to the approval of the Secretary of the Interior, an additional station ground not to exceed two hundred feet in width by a length of three thousand feet, west of Plummer, upon its located line in the Coeur d'Alene Indian Reservation, in the State of Idaho: *Provided*, That full compensation therefor shall be determined and paid under the direction of the Secretary of the Interior, in accordance with the provisions of the Act of March second, eighteen hundred and ninety-nine. (Thirtieth Statutes at Large, page nine hundred and ninety.)

Proviso. Compensation.

Vol. 30, p. 990.

Land withdrawn from allotment, etc. Description.

That the land in the following subdivisions now embraced in the Coeur d'Alene Indian Reservation in Idaho, to wit: Sections one, two, and twelve, township forty-six north, range four west, Boise meridian; sections thirty-five and thirty-six, township forty-seven north, range four west, Boise meridian; all of those portions of sections two, three, four, five, six, seven, eight, nine, ten, and eleven, township forty-six north, range three west, Boise meridian, lying south and west of the Saint Joe River in said township; all of those portions of sections thirty-one and thirty-two, township forty-seven north, range three west, Boise meridian, lying south and west of the Saint Joe River in said township is reserved and withdrawn from allotment and settle-

**Bureau of Indian Affairs, Interior****§81.1**

not inconsistent with the regulations in this part 75.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

**PART 81—TRIBAL REORGANIZATION  
UNDER A FEDERAL STATUTE**

**Sec.**

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**AUTHORITY:** 25 U.S.C. 473a, 476, 477, and 503.

**SOURCE:** 46 FR 1670, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§81.1 Definitions.**

As used in this part:

(a) *Adult Indian* means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) *Amendment* means any modification, change, or total revision of a constitution or charter.

(c) *Authorizing Officer* means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) *Cast ballot* means an official ballot that is cast in the proper manner at the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is

duly received through the mail by the election board.

(e) *Charter* means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(g) *Constitution or Constitution and Bylaws* means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) *Indian* means: (1) All persons who are members of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) *Invalid ballot* means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.

(k) *Member* means any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership or who is recognized as belonging to a tribe by the local Indians comprising the tribe.

(l) *Mutilated ballot* means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will



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be provided for the new ballot to be received by the election board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is to be counted in the same manner as a spoiled cast ballot.

(m) *Officer in Charge* means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs (or a Bureau employee that such person might designate) having administrative jurisdiction over a tribe.

(n) *Official ballot* means a ballot prepared by the Bureau of Indian Affairs for use in an election pursuant to this part. It is possible that an official ballot may be found to be either spoiled or mutilated at the time the votes are counted.

(o) *Registration* means the act whereby persons, who are eligible to vote, become entitled or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.

(p) *Reorganized tribe* means a tribe whose members have adopted a constitution pursuant to a Federal Statute.

(q) *Reservation* means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.

(r) *Revocation* means that act whereby the adult members of a tribe vote to abandon their constitutional form of government as opposed to their voting to amend or totally revise it.

(s) *Secretarial election* means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from *tribal* elections which are conducted under tribal authority. (See *Cheyenne River Sioux Tribe v. Andrus*, 566 F. 2d 1085 (8th Cir., 1977), cert. denied 439 U.S. 820 (1978)).

(t) *Secretary* means the Secretary of the Interior or his/her authorized representative.

(u) *Spoiled ballot* means an official ballot that has been marked in such a way that it is not possible to determine the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled and not cast. In this case, the spoiled ballot may be exchanged for a new one. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

(v) *Tribal government* means that entity established pursuant to a tribal constitution as empowered to speak for the tribe or in the absence thereof any group or individual that is recognized by the tribal members as empowered to speak for the tribe.

(w) *Tribe* means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the FEDERAL REGISTER pursuant to §83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(x) *Voting district* means a geographical area established to facilitate a tribal election process.

**§81.2 Purpose and scope.**

(a) The purpose of this part is to provide uniformity and order in:

(1) Holding Secretarial elections for voting on proposed constitutions when tribes wish to reorganize,

(2) Adopting constitutional amendments,

(3) Ratifying and amending charters,

(4) Revoking constitutions, and

(5) Facilitating the calling of such elections by the Secretary under provisions of a Federal Statute.

(b) This part may also be used as a guideline by tribes wishing to hold constitutional elections that are not held pursuant to a Federal Statute.

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(c) Where a discrepancy might appear to exist between these regulations and a specific requirement of the statute governing the reorganization of a tribe or ratification and amendment of charters, the regulations shall be interpreted to conform with the statute.

(d) As much as possible, Secretarial elections shall be scheduled so as to avoid their being held at the same time as *tribal* elections in order to avoid the confusion that results from different requirements for each kind of election.

**§81.3 Group eligibility.**

(a) No tribe which has voted to exclude itself from the provisions of the Indian Reorganization Act, or is otherwise precluded by law, may be reorganized under a Federal Statute. Tribes wishing to reorganize or a reorganized tribe seeking to amend its constitution and bylaws or wishing to vote to revoke such document shall do so under the regulations in this part.

(b) Charters issued to reorganized tribes shall be ratified or amended under the regulations in this part.

**§81.4 Assistance from the Department of the Interior.**

Representatives of the Department of the Interior will cooperate with and offer advice and assistance (including the proposing of amendments), to any tribe in drafting a constitution and bylaws, an amendment, a charter or charter amendment, or in revocation of constitutions. Any payments that might be necessary to non-Bureau staff assisting in the conduct of the election shall be made from tribal funds.

**§81.5 Request to call election.**

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

(b) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws pursuant to a Federal Statute upon receipt of a petition bearing the signatures of at least 60 percent of the tribe's adult members.

(c) The Secretary shall authorize the calling of an election to ratify a charter at the time the charter is issued, but he/she may issue a charter to a res-

ervation-based tribe only upon petition by at least one-third of the adult members of the tribe. No ratification, however, shall be valid unless the tribe has a constitution adopted and approved pursuant to the relevant Federal Statute.

(d) The Secretary shall authorize the calling of an election on the adoption of amendments to a constitution and bylaws or a charter when requested pursuant to the amendment article of those documents. The election shall be conducted as prescribed in this part unless the amendment article of the constitution and bylaws or the charter provides otherwise, in which case the provisions of those documents shall rule where applicable.

(e) If the amendment provisions of a tribal constitution or charter have become outdated and amendment can not be effected pursuant to them, the Secretary may authorize an election under this part to amend the documents when the recognized tribal government so requests.

(f) Any authorization not acted upon within 90 days (tribes in Alaska shall be granted 120 days) from the date of issuance will be considered void. Notification of the election date as provided for in §81.14 shall constitute the action envisioned in this section. Extension of an authorization may be granted upon a valid and reasonable request from the election board. Copies of authorizations shall be furnished the requesting tribe or petitioners.

(g) In those instances where conflicting proposals to amend a single constitutional or charter provision are submitted, that proposal first received by the officer in charge, if found valid, shall be placed before the voters before any consideration is given other proposals. Other proposals shall be considered in order of their receipt; provided, they are resubmitted following final action on the initial submission. This procedure shall also apply in those instances where new or revised constitutions are at issue.

**§81.6 Entitlement to vote.**

(a) If the group is a tribe, or tribes, of a reservation and is acting to effect reorganization under a Federal Statute for the first time:

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(1) Any duly registered adult member regardless of residence shall be entitled to vote on the adoption of a constitution and bylaws.

(2) Duly registered adult nonresident members and ill or physically disabled registered adult resident members may vote by absentee ballot (see §81.19).

(b) If the group is composed of the adult Indian residents of a reservation:

(1) Any adult duly registered member physically residing on the reservation shall be entitled to vote.

(2) Absentee voting shall be permitted only for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) If the group is a tribe, or tribes, without a reservation as defined in this part, any duly registered member shall be entitled to vote on the adoption of a constitution and bylaws by either arriving at a polling place or by requesting, properly completing, and timely casting an absentee ballot as determined by the election board pursuant to the relevant Federal Statute; provided, that outside of Alaska and Oklahoma, a reservation shall be established for the tribe before it becomes entitled to vote on the adoption of a constitution.

(d) For a reorganized tribe to amend its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(e) For a reorganized tribe to revoke its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters as was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(f) For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members

physically residing on the reservation shall be entitled to vote.

**§81.7 Adoption, ratification, or revocation by majority vote.**

Except as it may be further limited by this part, a constitution and bylaws, amendments thereto, or charter and charter amendments shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of adoption, ratification, or revocation. The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise. The names of persons appearing on the registration list who have not reached eighteen years of age by the date of the election, shall be removed from the list of registered voters when determining whether the required percentage of participation has been achieved. Unless the existing constitution or charter provides otherwise, none of the actions cited in this section shall become effective until they are approved by the Secretary. The validity of any charter ratification shall be dependent upon the tribe first having reorganized. Duly ratified charters shall be revoked or surrendered only by Act of Congress.

**§81.8 Election board.**

(a) There shall be an election board consisting of the officer in charge acting as chairman and at least two representatives of the tribal governing body or an authorized representative committee. Where such persons may be unwilling or unable to serve, the chairman shall select at least two adult members of the tribe to serve. In addition, the officer in charge may appoint an interpreter and as many clerks and poll watchers as he/she deems necessary, but they shall not be members of the board.

(b) It shall be the duty of the board to conduct elections in compliance with the procedures described in this part and in particular:

(1) To see that the name of each person offering to vote is on the official list of registered voters;

(2) To keep the ballot boxes locked at all times except when ballots are being counted;

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(3) To see that ballots are cast only by registered voters and that the voting list is checked to indicate this;

(4) To begin to count the regularly cast ballots immediately after the close of the polls and then the absentee ballots, pursuant to §81.21;

(5) To post and certify the election returns;

(6) To return the following to the officer in charge:

(i) The ballots (in marked and locked boxes);

(ii) All unused ballots; and

(iii) The completed Certificate of Results of Election. The officer in charge shall retain the ballots and other material among official records for at least one year. At the end of one year, the officer in charge shall forward the contents of the boxes and other related material to the appropriate Federal Records Center.

**§81.9 Voting districts.**

If: (a) Voting districts have not already been designated for tribal elections in the tribal constitution or by tribal election ordinance or resolution; and (b) in the election board's judgment voting districts are needed, the board shall establish them and designate a polling place for each district. Where a reservation exists, no voting district may be established beyond its boundaries.

**§81.10 District Election Boards.**

(a) Where voting districts have been established by the tribal constitution, ordinance, resolution, or by the election board, the election board shall appoint district election boards for each district, which shall have the duties prescribed above for the election board except that they shall return to the election board:

(1) The ballots (in marked and locked boxes),

(2) All unused ballots, and

(3) Their certifications of the district election results on the certification forms prescribed by the election board.

(b) The board will compile the election results for the entire reservation and transmit them together with the aforementioned ballots and ballot boxes to the officer in charge.

**§81.11 Registration.**

(a) Only registered voters will be entitled to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters. The election board, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to §81.6 of the need to register if they intend to vote. Any tribal member who, to the election board's knowledge, will become 18 years of age within 150 days (180 days for Alaska tribes) from the date of authorization and who is otherwise eligible to vote shall also be notified and shall be eligible to register, provided that such a person shall not be entitled to vote if election day falls before the individual's 18th birthday. This notice shall be sent to an individual's last known address as it appears on the records of the local unit of the Bureau of Indian Affairs having jurisdiction. Each notice addressed to a tribal member not residing on the reservation shall be accompanied by a preaddressed registration form (BIA Form 8302) which shall set forth the following information in the upper right corner:

(1) OMB Clearance Number 1076-003, Expires June 30, 1983;

(2) The name and address of the person desiring to register;

(3) A statement with a signature line attesting that the individual is a tribal member and is at least 18 years of age, or will be within 150 days, (180 days for Alaska tribes) from the date of authorization; and

(4) The three following statements: "Completion of and return of this registration form is necessary if you desire to become qualified to vote in the forthcoming constitutional or charter election." "This form, upon completion and return to the election board, shall be the basis for determining whether you qualify to have your name placed upon the list of registered voters and receive a ballot" and "completion and return of this form is voluntary." Members who qualify as absentee voters and wish to cast an absentee ballot must complete and return the above

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registration form before, or in conjunction with, requesting an absentee ballot in sufficient time to permit compliance with §81.12.

(b) The following records shall be kept for all notices:

(1) Names and addresses of persons to whom notices are mailed;

(2) Date of mailing; and

(3) A copy of each return registration request (including from whom received and date and time of receipt).

Tribal members living on the reservation who desire to vote must register with the election board in the manner it determines in time to permit compliance with §81.12. Registration procedures for such Indians shall be included in the notice of the need to register to resident members.

[46 FR 1670, Jan. 7, 1981, as amended at 46 FR 38352, July 27, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§81.12 Voting list.**

The election board shall compile in alphabetical order an official list of registered voters arranged by voting districts, if any. This list shall designate, where applicable, those who have requested an absentee ballot and the members of the tribe who are or will have attained the age of 18 years within 150 days (180 days for Alaska tribes) from the date an election is authorized and who have duly registered to vote. A copy of this list shall be supplied to any district election board and shall be posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs, the tribal headquarters, and at various other public places designated by the election board at least 20 days prior to the election.

**§81.13 Eligibility disputes.**

The election board shall determine the eligibility of any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list. Its decision shall be final. It shall rule on all claims no later than ten days before the election. Any claim not presented at least ten days before the election shall be disallowed. Nonresident claimants successfully appealing omission

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from the list shall immediately be furnished an absentee ballot. Omission of names from the voters list due to late registration, if notification (pursuant to §81.14) has been timely mailed, shall not be considered grounds for challenge.

**§81.14 Election notices.**

Not less than 30 nor more than 60 days notice shall be given of the date of the election. Such notice shall include the location of where the results will be posted. The notice shall also advise that persons must register if they intend to vote. The election board shall determine whether the notice will be given by television, radio, newspaper, poster, or mail, or by more than one of these methods and whether in an Indian language in addition to English. A copy of any written election notice may be mailed to each registered voter and shall be posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the election board. At any time after receiving Secretarial authorization to hold the election, the board shall make available to the adult members of the tribe the text of any amendment or proposed constitution and bylaws, amendment thereto, charter, or charter amendment. The election board may determine the manner and timing of the distribution. However, the text shall be posted at least within the local administrative unit of the Bureau and the tribal headquarters within two days following the giving of notice of the election date by the election board.

**§81.15 Opening and closing of polls.**

If polling places are established, the polls shall remain open from 8 a.m. to 7 p.m., local time, unless different hours are set by the election board and the voters are informed of this in the election notice.

**§81.16 Interpreters.**

Interpreters, where needed, may be provided to explain the manner of voting to any voter who asks for instructions; provided, that all reasonable precautions are taken to ensure that the interpreter does not influence the voter in casting the ballot. The interpreter



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may accompany the voter into the booth upon the latter's request.

**§81.17 Electioneering.**

There shall be no electioneering during voting hours within 50 feet of any voting place. Sample ballots will be permitted in the voting booth.

**§81.18 Manner of voting.**

(a) Registered voters may vote by arriving at the appropriate polling place within the prescribed voting hours telling officials their names and addresses, signing their signature or mark on the voting list, and by marking and placing in the ballot box the ballots which will be handed to them. Voting shall be by secret ballot.

(b) Voting may take place at the same time regarding the adoption of a constitution, the ratification of a charter, or the amendment of such documents; provided, that entitlement to vote for the proposal is consistent with §81.6 of this part and, provided further, that no charter shall be considered ratified if the proposed constitution is not adopted and approved.

(c) The election board may choose not to use polling places and provide for the issuance and receipt of ballots entirely through the United States Postal Service. In that event, the election board shall use the appropriate procedures set forth in this part relating to absentee balloting.

**§81.19 Absentee voting.**

(a) Nonresident members who have registered may vote by absentee ballot except as prohibited by §81.6. Also, whenever, due to temporary absence from the reservation, illness, or physical disability, a registered and otherwise eligible voter is not able to vote at the polls and notifies the election board, the voter shall be entitled to vote by absentee ballot. Upon his or her request, the election board shall give or mail absentee ballots to registered voters who may be entitled to receive them pursuant to §81.6. At the same time, such voters will also be provided a copy of the proposal to be voted upon when the full text does not appear on the ballot. Appropriate records shall be kept of those from whom requests are received and the date they were re-

ceived. The election board shall allow an absentee voter no less than ten days from the mailing out of an absentee ballot to receive and return the ballot. This period shall not be afforded absentee voters desiring to exchange a mutilated or spoiled ballot less than ten days before the election date. While requests for absentee ballots received less than ten days before an election will be promptly honored, no absentee ballot will be counted if received later than either the close of the polls or after some other deadline established by the election board. The election board shall furnish election officials the names of individuals who have been given or had mailed to them an absentee ballot.

(b) Accompanying the absentee ballot shall be:

- (1) An inner envelope bearing on the outside, the words "Absentee Ballot,"
- (2) Instructions for completion of the absentee ballot,
- (3) A copy of the proposed amendment, and
- (4) A preaddressed outer envelope, imprinted on the back with a certificate as follows:

I, (name of voter), hereby certify that I am a qualified voter of the (name) Tribe of Indians; that I will be 18 years of age or over at the election date and am entitled to vote in the election to be held on (date of election); and that I cannot appear at the polling place on the reservation on the date of the election because (indicate one of the following reasons): I am a non resident voter ☐; or I expect to be temporarily absent from the reservation ☐; or because of illness ☐; or physical disability ☐; or because no polling place has been established ☐. I further certify that I marked the enclosed ballot in secret.

Signed: \_\_\_\_\_ (voter's signature).

(c) The absentee voter shall mark the ballot and the ballot shall then be folded so as to conceal the marking and be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then place the sealed envelope marked "Absentee Ballot" in the outer envelope, seal it and complete the certificate and mail it. The preaddressed outer envelope shall be directed to the election board at the reservation. Absentee ballots must be received by the election board not later

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than the close of the polls or as otherwise directed by the election board.

(d) The election board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of the ballot, and from whom received. After duly recording the receipt date of absentee ballots received on time, representatives of the election board shall open the outer envelopes, secure them and place the unmarked inner envelopes containing the ballots in a separate box reserved for that purpose. After all other ballots have been counted, the absentee ballots shall be counted immediately and included in the results of the election.

**§81.20 Ballots.**

(a) Ballots are to be prepared clearly and simply so that it is easy for the voters to indicate a choice between no more than two alternatives. For example, if a tribal council or the petitioners propose to reduce the one-half degree blood quantum required to qualify for membership but want the voters to decide whether it should be one-fourth or one-eighth, it would not be appropriate to put those two alternatives on the ballot. Doing so, would deny the voters an opportunity to vote for keeping the one-half degree blood quantum. Neither would it be appropriate to include all three blood quantum alternatives. Rather, those proposing the change should decide which blood quantum is to be submitted to the voters. The ballot in the Secretarial election would then give the electors the choice of marking either “yes” or “no.” A vote against the proposed change would be in favor of keeping the one-half degree blood quantum in the example.

(b) In preparing ballots for proposed amendments, care should be taken to ensure that:

(1) Each proposed amendment addresses only a single question.

(2) If a proposed amendment conflicts with other provisions of the document being amended, the ballot shall be prepared so that the question includes all changes in those other directly related provisions in order to avoid contradictions within the document.

(3) When more than one amendment is being submitted to the voters at a given election, the proposals shall be identified with alphabetical designations rather than numerical. The first of the several proposals would be labeled “Proposed Amendment A,” the next would be “Proposed Amendment B,” etc. Those amendments that are adopted and approved would then be assigned consecutive numbers to follow those assigned any earlier amendments that may have been made to that governing document. A statement similar to the following shall appear on each of the proposed amendments and shall be completed following the election:

Having been duly adopted and approved, Proposed Amendment (A,B,C, etc.) is hereby designated as Amendment No. \_\_\_ to the (Constitution, Charter, etc.) of the (name of tribe) Tribe.

(c) The election board will supply all ballots. Each ballot shall be stamped in red ink on its face in the same place:

OFFICIAL BALLOT  
(Facsimile Signature)  
CHAIRMAN, ELECTION BOARD

(d) Should any voter spoil or mutilate a ballot in the course of voting at a poll, the voter shall destroy it in the presence of the election officials and the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

(e) Any spoiled or mutilated absentee ballot may be exchanged for a new one by returning it to the election board with a request for another. The board shall honor the request promptly and note the dates of related actions. No extension of time will be granted for receipt of exchanged ballots that might not be cast on time.

**§81.21 Counting of ballots.**

All duly cast ballots are to be counted. Even though it will not be possible to determine the intent of the voter regarding spoiled and mutilated ballots, they are to be counted for purposes of determining whether the required percentage of voters have cast their ballots in the election. Invalid ballots shall not be counted for purposes of determining the required percentage of votes cast.

**Bureau of Indian Affairs, Interior****Pt. 82****§ 81.22 Contesting of election results.**

Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the Secretary through the officer in charge the grounds for the challenge, *together with substantiating evidence*. If in the opinion of the Secretary, the objections are valid and warrant a recount or new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

**§ 81.23 Posting and certifying election results.**

(a) The results of the election shall be posted in the local Bureau of Indian Affairs office, tribal headquarters, and at other appropriate public places determined by the election board.

(b) The election board shall certify the results of the election on the following form and transmit them to the local unit of the Bureau of Indian Affairs:

**Certificate of Results of Election**

Pursuant to a Secretarial election authorized by the (title of authorizing officer) on (date), the attached Constitution and Bylaws (Amendment, Charter or Charter Amendment) of the (name of tribe) was submitted to the qualified voters of the tribe and on (date), was duly (adopted) (ratified) (rejected) or (revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled or mutilated in an election in which at least 30 percent (or such "percentages" as may be required to amend according to the constitution) of the (number) members entitled to vote, cast their ballot in accordance with (appropriate Federal statute). Signed: (By the chairman of the election board and board members.)

Date: \_\_\_\_\_

**§ 81.24 Approval, disapproval, or rejection action.**

(a) Action to approve or disapprove constitutional actions will be taken promptly by the authorizing officer following receipt of the original text of the material voted upon and the original of the Certificate of Results of Election from the officer in charge.

(1) When required and granted, the authorizing officer shall furnish a tribe with written approval of constitutional actions. In the absence of an election

challenge, the approval shall be issued promptly following the expiration of the contest period. Copies of his/her written approval, the Certificate of Results of Election, and the text of the material voted upon shall be transmitted to the Commissioner of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

(2) When a proposed constitution or charter action is rejected by the voters, the authorizing officer shall indicate in writing to the tribe his/her awareness of the election results and send to the Commissioner of Indian Affairs in Washington, DC, copies of the communication, the Certificate of Results of Election and the text of the material voted upon.

(3) When the authorizing officer disapproves a constitutional action, he/she shall in writing promptly notify the tribe of the determination and furnish the Commissioner of Indian Affairs in Washington, DC, a copy of the communication along with the Certificate of Results of Election and the text of the material voted upon.

(b) Where Secretarial approval of proposed constitutional and charter actions is required in conjunction with authorization of an election, copies of the formal approval shall immediately be furnished the Commissioner of Indian Affairs in Washington, DC, by the authorizing officer and be followed in accordance with paragraph (a)(1) of this section by copies of the Certificate of the Results of Election and the text of the material voted upon as soon as it is available.

**PART 82—PETITIONING PROCEDURES FOR TRIBES REORGANIZED UNDER FEDERAL STATUTE AND OTHER ORGANIZED TRIBES**

**Sec.**

- 82.1 Definitions.
- 82.2 Purpose and scope.
- 82.3 Applicability to tribal groups.
- 82.4 Entitlement to petition.
- 82.5 Sufficiency of a petition.
- 82.6 Petition format.
- 82.7 Notarization of petition signatures.
- 82.8 Filing of petitions.
- 82.9 Challenges.
- 82.10 Action on the petition.
- 82.11 Duration of petition.



### **CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2018, I electronically filed the foregoing brief and addendum with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Thekla Hansen-Young  
THEKLA HANSEN-YOUNG